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NOTES OF RECENT CASES.

Horwill, J. Hakku Bai *v.* Jagannadha Prasad.
17th April, 1950. A. A. A. O. No. 212 of 1948.

Hindu Women's Rights to Property Act (XVIII of 1937), section 3—Estate obtained by widow of coparcener—Right of her husband's creditors to proceed against the share of property.

When a member of a Hindu coparcenary dies, his creditors can proceed against his share of property in the hands of his widow for the satisfaction of his debts.

S. A. Seshadri Aiyangar for Appellant.

V. Seshadri and *K. S. Ramamurthi* for Respondent.

K. S. *Appeal allowed.*

Subba Rao and Panchapakesa Ayyar, JJ. Kotiah, *In re.*
18th April, 1950. Cr. App. No. 828 of 1949.

Criminal trial—Evidence—Extrajudicial confession—Law in regard to.

The law in regard to extrajudicial confessions may be stated thus : The grounds of rejection as well as of the reception of confessions in evidence are well marked ; if confessions constitute best evidence, as a person may reasonably be assumed not to admit facts detrimental to his interests, they may also retard the progress of justice as there is ample scope for abuse in the hands of unscrupulous witnesses, over zealous officers of State, and, in exceptional cases of the accused themselves, dominated by the idea of self-immolation, actuated by design or hallucination or even mental defect. It is therefore a question of fact in each case and it is for the jury or the Judge as the case may be, to find out whether such a confession is voluntary or induced by any of the aforesaid reasons. Though it cannot be laid down as an inflexible rule of law that in no case an extrajudicial confession will afford the sole basis for conviction, in cases of homicide and such other similar grave offences it would not be safe to convict a person on the confession alone unless corroborated by other evidence. This is a rule of prudence rather than of law. The nature and the quality of corroborative evidence must again necessarily depend upon the facts of each case.

[On the facts the extrajudicial confession made by the accused was found amply supported by corroborative evidence to warrant a conviction.]

K. S. Jayarama Aiyar and *C. K. Venkatanarasimhan* for the Accused.

The Assistant Public Prosecutor (*A. S. Sivakaminathan*) for the State.

K. S. *Appeal dismissed.*

Rajamannar, C.J. and Balakrishna Ayyar, J. Ramakrishna Sastri, *In re.*
18th April, 1950. C. M. P. No. 3832 of 1950.

Mandamus—*Writ of, if can issue where only complaint is that a Sub-Inspector of Police took away the working permit of a Printing Press and has not returned it.*

The writ of *mandamus* was not intended to apply to cases where the only complaint is that an executive official a (Sub-Inspector of Police) of Government has taken away an article (working permit of a Printing Press) which belonged to the petitioner and has not returned it. No doubt if a public official or public body fails to perform any public duty with which they have been charged a writ of *mandamus* would lie to compel them to carry it out and executive officers of the Government would also come within the purview of such writs. But then, it must be established that the particular public official failed to perform any duty which he has been charged with either by statute or otherwise.

G. Venkatarama Sastri for Petitioner.

K. S. *Application dismissed.*

Rajamannar, C.J. and Balakrishna Ayyar, J. Shunmuga Mudaliar, *In re.*
19th April, 1950. C. M. P. No. 3877 of 1950.

Stamp Act (II of 1899), *Board of Revenue—Revision against order of Revenue Divisional Officer levying stamp duty and penalty on a document—Board if bound to give opportunity to petitioner to be orally heard—Writ of* certiorari *to quash order made without oral hearing—Cannot issue*—Mandamus *to Board to refer question of liability to stamp duty—If can issue.*

There is nothing in the Stamp Act or in the rules framed thereunder which enjoins on the Board of Revenue the duty to give an oral hearing to a person who invokes their revisional jurisdiction. All that *quasi* judicial tribunals like the Board of Revenue have to do is to give sufficient opportunity to the persons who approach them for the exercise of their jurisdiction to state their case. Where the petitioner has stated all his grounds of objection to the order of the Revenue Divisional Officer (levying stamp duty and penalty on a document), in his revision petition to the Board of Revenue, it cannot be said that the order of the Board dismissing the petition without a oral hearing is contrary to the principles of natural justice. A writ of *certiorari* to quash such order cannot therefore be issued.

Under section 57 of the Stamp Act it is left to the discretion of the Board to refer or not to refer any question as to the stamp duty payable on a document. A writ of *mandamus* therefore to the Board to refer the question of liability of the document to a stamp duty cannot issue from the High Court.

N. R. Raghavachariar for the Petitioner.

K. S. *Application dismissed.*

Satyanarayana Rao, J. Tirupati Rao *v.* Veeraswami.
20th April, 1950. A. A. O. No. 621 of 1948.

Provincial Insolvency Act (V of 1920), *section* 70—*Order directing complaint for any of the offences under section* 69 *to be filed—Preliminary enquiry—Not essential.*

It is unnecessary under section 70 of the Provincial Insolvency Act, to establish, before launching a prosecution, the various offences referred to in section 69. All that section 70 requires is that the court should be satisfied that there is ground for enquiring into any offences referred to in section 69. It is not necessary, and the court is not bound, so far as the language goes, to make a preliminary enquiry even.

M. S. Ramachandra Rao for Appellant.

N. Bapiraju and The Public Prosecutor (*V. L. Ethiraj*) for Respondent.

K. S. *Appeal dismissed.*

Raghava Rao, J. Pagammal *v.* Kasi Goundan.
24th April, 1950. C. R. P. No. 638 of 1947.

Civil Procedure Code (*V of* 1908), *Order* 23, *rule* 3—*Application for recording award decision—One of the parties not party to reference to arbitration—Assent of such party to the subsequent award—Effect.*

An application by a plaintiff for recording an award decision under Order XXIII, rule 3, Code of Civil Procedure, notwithstanding that the fourth defendant was not a party to the original reference to arbitration, might well be considered as one in which after the award was made by the arbitrators which may not *per se* be binding on the fourth defendant, the court can spell out from the conduct of the parties an agreement on the part of the fourth defendant that she should abide by what the arbitrators had actually declared as the rights and obligations of the parties in respect of the suit properties. In such a case the award can be regarded as representing a certain compromise to which on account of the assent given by the fourth defendant later, effect might be given under Order XXIII, rule 3, Code of Civil Procedure.

S. Ramachandra Iyer for Petitioner.

N. Sivaramakrishna Aiyar and *A. Balasubramania Aiyar* for Respondent.

K. S. *Petition dismissed.*

Rajamannar, C.J. and Balakrishna Ayyar, J. Venkataratnam *v.* Lalluram.
25th April, 1950. C. M. P. No. 1091 of 1950.

Madras Buildings (*Lease and Rent Control*) *Act* (*XV of* 1946), *section* 7—*Lease for a period of ten years on a rental of Rs.* 16 *per mensem—Default in payment of rent—Right to evict under the Act.*

Even where there is a lease deed for a period of ten years on a monthly rental it cannot be said that the Rent Control Act cannot apply before the termination of the lease. If there is default in payment of rent the tenant may be evicted even before the termination of the tenancy in accordance with the provisions of section 7 of Madras Act XV of 1946.

M. S. Ramachandra Rao for Petitioner.

D. P. Narayana Rao for Respondent.

K. S. *Petition allowed.*

Chandra Reddi, J. Bellan, *In re.*
26th April, 1950. Cr. R. C. No. 1689 of 1949.

Madras Prohibition Act (*X of* 1937), *section* 4-*A—Gist of offence—Liquor consumed an exempted article under section* 17—*Effect—Validity of Act.*

Section 4-A of the Madras Prohibition Act consists of two distinct clauses, one making it an offence to be found in a state of intoxication in a public place irrespective of the kind of liquor that was taken and the other dealing with an offence committed by persons who were found in a state of intoxication in a private place by consuming any liquor or intoxicating drug without a permit to do so. The gist of the offence under the first clause consists in appearing in a public place in an intoxicated state. It does not make any difference whether the intoxication is caused either by any liquor or any intoxicating drug which is exempted under section 16 (*e.g.*, tincture zingeberis) or by an article which the offender is permitted to consume under a permit issued by the authority concerned.

The Prohibition Act is *intra vires*, because it was perfectly within the competence of the Provincial Legislature to enact the prohibition of the manufacture,

use, etc., of intoxicating liquors. Section 4-A of the Act being specific prevails over the general provision in section 510 of the Penal Code which prevents persons from misconducting themselves in a public place and it cannot be said that the offender will be liable only under section 510 of the Penal Code.

N. S. Mani for Petitioner.

N. T. Raghunathan for Public Prosecutor (*V. L. Ethiraj*) on behalf of the State.

K. S. *Sentence reduced.*

Panchapakesa Ayyar and Basheer Ahmed Sayeed, JJ. Subba Rao, *In re.*
23rd May, 1950. Cr. M. P. No. 613 of 1950.

Preventive Detention Act (IV of 1950), *section* 14—*Invalidity—Court can look into the grounds of detention.*

Section 14 of Act IV of 1950 is invalid. [Decision of the Supreme Court in *Gopalan's case*, since reported in (1950) 2 M.L.J. 42 followed]. The Court has therefore jurisdiction to look into the grounds of detention and act on the facts stated in them.

A. Ramachandran for *Messrs. Row and Reddy* for Petitioner.

The Assistant Public Prosecutor (*A. S. Sivakaminathan*) on behalf of the State.

K. S. *Petitioner directed to be released.*

Panchapakesa Ayyar, J. Nanohariah, *In re.*
30th May, 1950. Cr. R. C. Nos. 617 to 632 of 1950.
(Cases Referred Nos. 34 to 49 of 1950).

Criminal Procedure Code (*V of* 1898), *sections* 366, 367 *and* 537—*Sentences passed without writing judgments—Illegality not curable under section* 537.

Where a Sub-Magistrate failed to write judgments before passing sentences, in violation of sections 366 and 367, Criminal Procedure Code, the illegality in all the cases where there was conviction is incurable under section 537, Criminal Procedure Code and the convictions must be set aside. In cases which related to discharge and acquittal the irregularity is curable under section 537, Criminal Procedure Code.

The Assistant Public Prosecutor (*A. S. Sivakaminathan*) on behalf of the State.

K. S. *Convictions set aside.*

Panchapakesa Ayyar, J. Public Prosecutor—Petitioner.
27th June, 1950. Cr. R. C. No. 695 of 1950.
(Cr. R. P. No. 639 of 1950).

Criminal Trial—Conviction—Sentence—Order of detention in Borstal School—If can be made to run consecutively with a previous order for detention.

There is no provision to direct on order of detention in a Borstal School to run consecutively with such a previous order of detention, as in the case of a sentence of imprisonment. Detention in a Borstal School is a reformatory measure, like admonition and there is little point in piling detention on detention any more than in giving admonition after admonition.

The Assistant Public Prosecutor (*A. S. Sivakaminathan*) for Petitioner.

K. S. *Detention ordered to run concurrently.*

Viswanatha Sastri, J. Varadamma *v.* Sankara Reddi.
22nd March, 1950. S.A. No. 97 of 1948.

Hindu Law—Adoption—Adoption by senior widow—Consent of junior widow if essential for validity.

It cannot be said that a senior widow is dependent on the junior widow for advice and protection or that the junior widow stands in the same position as agnatic males in the matter of supplementing the want of independence in the senior widow and advising and assenting to an adoption by the senior widow. Though a consultation with the junior widow is desirable and proper, its absence, however regrettable from the point of view of family etiquette and concord, does not invalidate an adoption by the senior widow which is otherwise valid.

T. M. Krishnaswami Aiyar, E. Subramaniam and *K. Narayanaswami Naidu* for Appellant.

T. S. Narasinga Rao, M. Balachandrudu and *E. Venkatarama Rao* for Respondent.

K.S. *Appeal dismissed. Leave to appeal granted.*

Raghava Rao, J. Palghat Wariar Bank, Ltd. *v.* Padmanabhan.
4th April, 1950. S.A. No. 1187 of 1947.

Companies Act (VII of 1913), *section* 171—*Company in winding up attaching property in execution of decree in its favour—Claim petition by third party—If other " legal proceeding " for proceeding with which leave of Court is essential.*

When a company in winding up attaches certain property in execution of a decree in its favour as that of its judgment-debtor any claim petition by a third party cannot be regarded as " other legal proceeding " within the meaning of section 171 of the Companies Act. Such claim petition can be proceeded with against the company without leave of the Court.

It will be most inequitable that a company in liquidation should institute execution proceedings and rely upon section 171, Companies Act, to debar persons from defending their property in those execution proceedings.

D. A. Krishna Variar for Appellants.

C. Unikanda Menon for 1st Respondent.

K.S. *Appeal dismissed. No leave.*

Panchapagesa Sastry, J. Ramalingaiah *v.* Yaram Rajuah Naidu.
6th April, 1950. S.A. Nos. 1997, etc. of 1948.

Contracts—Agreement amongst villagers not to bid against each other and that actual bidder was to bid at auction sale and obtain right to catch the fish in a tank on behalf of all the villagers—Not invalid as opposed to public policy.

The right to catch fish for a year in a tank was leased out by revenue auction and *X* was the sole bidder for Rs. 11-4-0. *X* in his turn granted a lease of the right to *Y* for Rs. 600 (the fishery crop being worth considerably more). A representative suit was filed against *X* on behalf of the other villagers claiming their share of profit alleging that *X's* auction purchase was on behalf of all the villagers who had agreed not to bid against each other. On a question whether such " knock out " agreement was illegal as opposed to public policy.

Held: In England there had been an enactment of a statute to remedy the evil of a " knock out " combination like this. There is no similar statute in India. The agreement was not invalid and as the agreement alleged was found to be true the plaintiffs should succeed.

K. Umamaheswaram for Appellant.

M. Seshachalapathi for Respondent.

K.S. *Appeal allowed. No leave.*

Subba Rao and Panchapakesa Ayyar, JJ. Ramakrishnayya *v.* Sarasamma.
11th April, 1950. Appeal No. 519 of 1948.

Hindu Law—Partition—All the terms embodied in document—Inadmissible in evidence unless registered—Doctrine of part performance—If applies to partition arrangements—Transfer of Property Act (IV of 1882), *section* 53-A—*Scope.*

Where a partition deed created an interest in immovable property the mere fact that a provision was inserted enabling the parties to get a proper partition deed written up on stamp paper and get the same registered did not take away the document from the mischief of sections 17 and 49 of the Registration Act. The document is not admissible in evidence unless it is registered.

(1950) 1 M.L.J. 151, relied on.

Partition is really a process in and by which a joint enjoyment is transformed into an enjoyment in severalty. Each one of the sharers had an antecedent title and therefore no conveyance is involved in the process as a conferment of a new title is not necessary. Accordingly a partition is not a transfer within the meaning of section 53-A of the Transfer of Property Act and the doctrine of part performance cannot be invoked by a party claiming to be in possession by virtue of a partition under an unregistered deed.

(Case-law discussed).

P. Somasundaram and *P. Suryanarayana* for Appellant.

M. S. Ramachandra Rao and *M. Krishna Rao* for Respondent.

K.S. ——— *Appeal dismissed.*

Subba Rao and Panchapakesa Ayyar, JJ. Kamalabai Ammal *v.* Theethachari.
11th April, 1950. Appeal No. 672 of 1946.

Madras Agriculturists Relief Act (*IV of* 1938), *section* 4 (*h*)—*Debt due to woman—Crucial date for exemption under section.*

Under section 4 (*h*) of the Madras Agriculturists Relief Act, to get an exemption, it would be enough if the debt was due to a woman on 1st October, 1937, provided she did not possess property of the value mentioned in that clause. If once that condition is satisfied at its origin, we are not concerned with the character or the status of the creditor at the time the debt is sought to be enforced.

T. M. Krishnaswami Ayyar and *T. K. Subramania Pillai* for Appellant.

V. Seshadri and *K. S. Ramamurthi* for Respondent.

K.S. ——— *Appeal dismissed.*

Panchapakesa Ayyar, J. Hanumanthappa *v.* Gangappa.
17th April, 1950. C.R.P. No. 346 of 1949.

Practice—Legal practitioner's fees—Appeal admitting of appearance of a senior and junior practitioner—Senior if should be on record on date fixed for appearance of respondent to claim senior fees.

In an appeal admitting of the appearance of both a senior and junior practitioner and the payment of fees to both, it is not essential that the senior practitioner should be on the record in the appeal from the date fixed for the appearance of the respondent in the appeal before his fees can be claimed.

P. M. Srinivasa Aiyangar for Petitioner.

K. Umamaheswaram for Respondent.

K.S. ——— *Order modified.*

Satyanarayana Rao, J. Province of Madras *v.* District Board, Tanjore.
20th April, 1950. S.A. No. 1362 of 1947.

Water cess—If can be levied on inam villages not liable to such cess on the ground that more water is made to flow in the channel by reason of the Cauveri Mettur Project.

Merely because the Government have constructed the Cauveri Mettur Project as a consequence of which more water flowed into the channel the Government is not justified in the levy of water cess in the case of lands in inam villages (Mohanambalpuram *chatram* in Tanjore District) not liable to pay water cess from time immemorial.

The Government Pleader (*K. Kuttikrishna Menon* for Appellant.)

V. Ramaswami Aiyar for Respondent.

K.S. ——— *Appeal dismissed. Leave refused.*

Panchapagesa Sastry, J. Subramanyam *v.* Union of India.
20th April, 1950. C.R.P. No. 753 of 1948, etc.

Civil Procedure Code (*V of* 1908), *section* 80—*Notice of suit against Railway for loss of goods consigned—Failure to state that the suit will be against the Governor-in-Council—If makes the notice insufficient.*

Where a notice under section 80, Civil Procedure Code, merely says that a suit will be instituted but it does not state against whom, but where it is obvious that it is a suit proposed to be filed against the Government the notice must be held to be a proper notice under section 80, Civil Procedure Code.

K. Venkataramana for Petitioner in C.R.P. Nos. 753 and 1251 of 1948 and Respondent in C.R.P. No. 930 of 1948.

K. V. Ramachandra Aiyar for Petitioner in C.R.P. No. 930 of 1948 and Respondent in C.R.P. No. 1251 of 1948.

D. Narasaraju and *K. B. Krishnamurthi* for Petitioner in C.R.P. No. 1185 of 1948.

V. K. Ramanathan instructed by *Messrs. King and Partridge* for Respondents in C.R.P. Nos. 753, 930 and 1185 of 1948.

K.S. —————— *Petition allowed.*

Rajamannar, C.J. and Visvanatha Sastri, J.
21st April, 1950.

Mohammad Ismail Maracair *v.* Vajju Bibi Saheba.
C.R.P. No. 1205 of 1949.

Civil Procedure Code (V of 1908), *Section* 132 (1)—*Purdanashin plaintiff—Right to be examined on commission.*

The question whether any woman falls within the category of woman mentioned in section 132 of the Civil Procedure Code is really a question of fact. The customs and manners of the country mean the customs and manners of the different communities and classes and sections of the people in the country. It is not proper to take judicial notice of a complete change in the customs and manners of the Muslim community in the State of Madras as regards the custom of gosha. It will be rash to hold that gosha custom has become obsolete.

(1949) 2 M.L.J. 517 considered.

Quaere : Whether a woman who belongs to a community which still observes gosha generally, but who has herself completely abandoned that custom is entitled to the exemption under section 132 (1), Civil Procedure Code ?

The Court can take the change in the mode of life of a particular lady into consideration in exercising its discretion in the grant of a prayer from her being examined on commission. The Court can refuse to grant the application of a woman who though she may belong to a community which observes gosha has herself abandoned the custom, to be examined on commission when she is herself a party to the suit. She can be examined in chamber or in Court after excluding the members of the public.

G. R. Jagadisan for Petitioner.

A. Viswanatha Aiyar and *D. C. Krishnamurthi* for Respondent.

K.S. —————— *Order modified.*

Rajamannar, C.J., and Balakrishna Ayyar, J.
21st April, 1950.

Ramanathan Chettiar *v.* Kandappa Goundan.
S.A. No. 432 of 1947.

Limitation Act (IX of 1908), *section* 20 *as amended by Act (XVI of* 1942)—*How far restrospective in operation.*

In the absence of anything to the contrary, if a claim is within limitation according to the old Act, on the date when the new Act comes into force and a proceeding is commenced, after the coming into force of the new Act, it is the new Act which would govern all decisions on the point of limitation. If, however, the right to sue or the right to apply had already been barred by the provisions of the Limitation Act then in force, then unless there was something in the latter Act which could be deemed to apply retrospectively to revive claims which had already become barred, the new Act cannot be availed of for the purpose of saving limitation. The law of limitation to be applied to a suit instituted long after the amending

Act of 1942 is the law as it stood on the date of the endorsement of open payment which is relied upon to save limitation under section 20 of the Limitation Act.

N. Sivaramakrishna Aiyar and *A. Balasubramania Aiyar* for appellant.

V. Ramaswami Aiyar for Respondents.

K.S. — *Appeal dismissed.*

Somasundaram, J. Kutumba Rao *v.* Venkataramayya.
27*th April*, 1950. S. A. Nos. 792, 793 and 852 of 1947.

Malicious prosecution—Suit for damages for—Civil Court, if can go behind acquittal of plaintiff in Criminal Court and believe the eye witnesses disbelieved by Criminal Court.

It cannot be said that in cases where there are eye witnesses who have been disbelivered by the Criminal Court and thereby resulting in acquittal, it is not open to the Civil Court in a suit for damages for malicious prosecution to go behind that acquittal and believe the eyewitnesses and find that there was a reasonable and probable cause for filing the complaint. It is the duty of the Civil Court to consider the evidence adduced in support of the defendant's version and assess its value to find out if there is reasonable and probable cause.

A. Sambasiva Rao for Appellants.

D. Munikanniah for Respondent.

K. S. — *Appeals dismissed. Leave refused.*

Horwill, J. Corporation of Madras *v.* Abdul Hussain Nayarally & Co.
27*th April*, 1950. C.C.C. A. No. 53 of 1949.

Madras City Municipal Act (IV of 1919), *section* 137-*B—Scope—Assessment at low rate—If assessee can be taxed at higher rate as having "escaped assessment".*

Section 137-B of the City Municipal Act enables the Corporation to assess a person to any taxes or fees leviable under that chapter who had escaped assessment. A person can be said to escape assessment or tax if some portion of his property has not been taxed at all. But if the Corporation merely thought that the assessment was too low and ought to be raised, the words "escaped assessment" would be totally inapplicable. Merely because the assessment was considered to be too low it cannot be said that property had escaped assessment.

Dr. V. K. John for Appellant.

P. Srinivasa Iyengar for Respondent.

K.S. — *Appeal dismissed.*

Govinda Menon, J. Tanjore Co-operative Marketing Federation *v.* Krithivasan.
27*th April*, 1950. C. R. P. No. 116 of 1949.

Madras Co-operative Societies Act (VI of 1932), *section* 51—*Employee asking for refund of security deposit and arrears of salary—Suit for if not barred by section* 51 *of the Act.*

When an employee of a Co-operative Society asks for the refund of his security deposit made by him and for the arrears of salary it cannot be said to be a matter relating to the business of the society. Section 51 of the Madras Co-operative Societies Act is no bar to a suit by an employee to recover such amount.

G. R. Jagadisa Aiyar for Petitioner.

M. S. Venkatarama Aiyar for Respondent.

K. S. — *Petition dismissed.*

Balakrishna Ayyar, J. Provincial Government, Madras v. Rajalakshmi Ammal.
28th *April*, 1950. C. R. P. No. 1737 of 1948.

Execution sale—Poundage—If can be levied only when sale is a "public" or open sale—Madras Civil Rules of Practice—Rule 200.

It cannot be said that poundage can be levied only when the sale is a "public" or open sale. Poundage is levied in part to cover the expenses of the sale and there is always a certain amount of expense in connection with sales whether the auction is open to all or limited to persons who satisfy a certain description. The language of the rule requires that poundage be levied in "respect of sales".

The Government Pleader (*K. Kuttikrishna Menon*) for Petitioner.

Respondents not represented.

K. S. — *Petition allowed.*

Raghava Rao, J.
25*th April*, 1950.

Ahmad Koya Mollah *v.* The Calicut Municipal Council.
S.A. No. 1398 of 1947.

Civil Procedure Code (*V of* 1908), *Order* 23, *rule* 1—*Power to allow withdrawal of second appeal—If can be exercised to enable party to ask for review of judgment and decree of the lower appellate court. Considerations of hardship—Relevance.*

The power to allow withdrawal of suits is specifically dealt with by the Code and unless the conditions prescribed by the Code do exist the court has no jurisdiction to allow the withdrawal of the second appeal merely because unless that is done no review of the judgment and decree of the lower appellate court can be sought by the other side and the other side will thereby be put to considerable hardship. Considerations of hardship have no place in the application of the provisions of the Code where they are perfectly clear and on considerations of hardship it is not open to any court to exercise inherent powers on matters specifically dealt with by the code itself.

S. R. Subramania Aiyar for Appellant.

K. Kuttikrishna Menon (The Government Pleader) for Respondents.

K. S. ——— *Appeal dismissed. Leave refused.*

Somasundaram, J.
26*th April*, 1950.

Ratnaswami Pillai *v.* Kathija Bivi Ammal.
S.A. No. 484 of 1947.

Hindu law—Will—Construction—Principles—Bequest to daughter "of all my immoveable and moveable properties"—Subsequent clause providing for gift over to daughter's grandson after her lifetime—Nature of estate conferred on daughter.

The cardinal principle which governs the true construction of a will is to find out from the words used what exactly was the intention of the testator, whether there are clear and unambiguous dispositive words and if they are attempted to be controlled or qualified by any general expression of intention. It is also necessary to see whether any technical words or words of known legal import have been used and if so we must give legal effect to it. Where property is given to the donee "சர்வ சுதந்திரத்துடன்" the donee takes it absolutely. Subsequent words restricting the donee from selling the lands for any purpose other than for discharging the debt, is repugnant and is therefore invalid and cannot cut down the absolute interest already conferred. *Pugalumperumal Pillai* v. *Thangathammal*, (1949) 1 M.L.J. 389, relied on.

A recital that after the daughter's lifetime her grandson should get the properties is at best a provision for devolution of the property after her death and is not intended to limit the character of the estate given by the earlier bequest in favour of the daughter.

S. Swaminathan for Appellant.

G. R. Jagadisan for Respondent.

K. S. ——— *Appeal dismissed.*

Horwill and Balakrishna Ayyar, JJ.
27*th April*, 1950.

Abdul Salam *v.* Khasim Baig.
O.S.A. No. 29 of 1947.

Registration Act (*XVI of* 1908), *sections* 2 (7), 17 (*d*) *and* 49—*Agreement to lease—When present demise requiring registration—Tests.*

Whether the agreement to lease amounts to a present demise or not depends on the intention of the parties; this intention is to be gathered from the language used in the agreement and subject of course to the provisions of chapter 6 of the Indian Evidence Act, other collateral circumstances. Neither the circumstance that the lease is to take effect from a future day nor the fact that the parties contemplated the execution of a formal document on a subsequent date will remove the transaction from the category of a "present demise". Nor a provision that the lease is to take effect on the termination of an existing tenancy. But an agreement to lease at an uncertain future date should an event occur, the outcome of which neither party can confidently predicate, will not amount to a present demise. Where certain conditions have to be fulfilled and those conditions are in the nature of a condition precedent, then too there would be no present demise until those conditions are satisfied. The informality of a document would

be one circumstance that may be taken into account in deciding whether the intention of the parties was that there should or should not be a present demise. The use of certain expressions like "I hereby let" would indicate an intention to create a present demise.

A document ran thus :—"On the 10th March, 1945, the rental receipt executed in favour of Vaniambadi Palli Abdul Salam Sahib Avergal, by Periamet H. M. Khasim Baig Saheb Avergal.

Having settled a rent of Rs. 175 per mensem for a period of 10 years in respect of the buildings within Jubilee Market purchased by you inclusive of the verandahs on the western and eastern side the advance paid this day to you is Rs. 2,000 (rupees two thousand). I will pay the rent to you every month. I will make all convenient arrangements within the said market by demolishing or constructing some buildings. From the date on which you hand over the key to me after completing the plastering work of the walls of the said market, I will pay rent. This is the agreement executed by the consent of both of us." The document was unregistered. In a suit for specific performance against the landlord : *Held*, There was a present demise. The document therefore cannot be received in evidence "so as to affect any immoveable property comprised therein" or "be received as evidence of any transaction affecting such property."

Such a document however may be used as evidence of the agreement in a suit for damages for its breach. Decision of the Full Bench on S. A. No. 2048 of 1946 followed.

K. Bhashyam and *E. R. Krishnan* for Appellant.

S. K. Ahmed Meeran for Respondent.

K. S. *Decree for specific performance set aside and decree granted for damages.*

Horwill and Balakrishna Ayyar, JJ. Abdul Salam *v.* Khasim Baig.
27th April, 1950. O.S.A. No. 12 of 1949.

Lease—Lessee if bound to accept delivery of part of the premises.

A lessee is not bound to accept delivery of only a part of the premises. If a house consisting of fifteen rooms is let the lessee is not bound to accept delivery only of fourteen rooms. He will be well within his rights in saying "If you want me to a accept delivery you must give me the whole house and not merely the part of it."

K. Bhashyam and *E. R. Krishnan* for Appellant.

S. K. Ahmed Meeran for Respondent.

K. S. *Order of remand set aside and appeal dismissed.*

Rajamannar, C.J. and Somasundaram, J. Nagabhushana Reddi, *In re.*
11th July, 1950. C.M.P. No. 5536 of 1950.

Constitution of India—Article 226—Scope—Writ of prohibition—When available—If can be issued against Election Sub-Committee, All India Congress Committee, etc.—

Ordinarily a writ of prohibition is available only against inferior Courts and Tribunals and bodies entrusted by the law of the land with powers to affect the rights of parties. Such a writ cannot be issued to a private organisation (like committees and officers of the All India Congress Committee) however widespread and powerful the organisation may be. The Congress party cannot be held in law to be a public body entrusted by the law of the land with powers and duties relating to the rights of people. A writ of prohibition therefore cannot be issued against officers of the Congress party.

The general rule that writs like mandamus, prohibition and *certiorari* will not issue if there is another adequate remedy should apply to the issue of a direction, order or writ under Article 226 (1) of the Constitution, in spite of the apparently wide language employed in that article.

In the case of irregularities in the primary panchayat elections of the A.I.C.C., a suit could be filed and an urgent order of injunction could be obtained immediately and as that relief was available an application under Article 226 (1) of the Constitution is not maintainable.

C. R. Pattabhiraman, R. Ramasubba Aiyar and *N. Koteswara Rao* for Petitioners.

K. S. *Petition dismissed.*

Subba Rao and Panchapakesa Ayyar, JJ. 20*th April*, 1950.

Venkareddi *v*. Ankamma. Appeal No. 62 of 1947.

Hindu Law—Wife's right to maintenance against husband—Imputation of unchastity—If sufficient ground—Such imputation how far "legal cruelty"—Rate of maintenance—Income of property alienated by husband—If can be taken into account—Transfer of Property Act (IV of 1882), *section* 39—*Scope.*

A wife would be entitled to maintenance if she proves legal cruelty or abandonment or any other justifiable reasons. A husband's imputation of unchastity to his wife would be a sufficient ground to non-suit him if he had filed a suit for restitution of conjugal rights. That would be a sufficient ground for awarding maintenance to the wife.

If a person with a medieval outlook on life imputes unchastity to his wife who is really chaste, it would be impossible to say that in no circumstances would such imputation of unchastity and persistence in that allegation be legal cruelty. In the case of a sensitive woman it may end in a nervous break down. In some cases a woman placed in the aforesaid circumstances may commit suicide. In other cases the jealous husband may commit murder. Therefore in certain circumstances such conduct of the husband may not only cause mental pain but also cause danger or apprehended danger to life, limb or health of the wife.

The income from property gifted away by the husband must be taken into consideration in fixing the rate of maintenance. The right which is protected by section 39 of the Transfer of Property Act is the right to receive maintenance from the profits of immoveable property and that right subsists even though a part of the property is alienated.

K. Umamaheswaram for Appellant.

M. S. Ramachandra Rao and *P. S. Raghavarama Sastri* for Respondent.

K. S. *Appeal and Memorandum of Objections dismissed.*

Subba Rao and Panchapakesa Ayyar, JJ. 24*th April*, 1950.

Venkatarama Naicker *v*. Ramaswami Naicker. C. R. P. No. 806 of 1946.

Provincial Insolvency Act (V of 1920), *sections* 53 *and* 54—*Mortgage cancelled under—Mortgagee if precluded from proving the debts—Revision—Memorandum of cross-objections does not lie.*

In order to prevent a person who has been a party to a fraudulent transaction from pleading his own fraud, the intended fraud must have been effected or there must have been a substantial part performance of the intention to defraud, and a mere fraudulent intention evidenced by the transaction is not sufficient. Where despite a mortgage by the debtor (which was ultimately set aside under sections 53 and 54 of the Provincial Insolvency Act) and a suit and a decree thereon for the first instalment due under the mortgage, there has been no substantial part performance of the fraudulent intention to prefer some of the creditors to others and no harm has actually been done and by reason of the setting aside of the mortgage the parties have virtually been put back in their original position, the mortgagee is not precluded from proving his debt in the insolvency. Sections 53 and 54 of the Provincial Insolvency Act merely say that the transfer of the property under that deed so set aside is void, and not everything connected with it. The dissociation of the debts included in the mortgage deed from the security is a familiar notion in law from time immemorial.

No memorandum of cross-objections will lie in a revision petition.

T. M. Krishnaswami Aiyar for Petitioner.

V. Ramaswami Aiyar for Respondent.

K. S. *Petition dismissed.*

NRC

Satyanarayana Rao, J.
27th April, 1950.

Rajarathna Vaduganatha Pillai *v.* Srinivasa Raghava Aiyangar.
C. R. P. No. 845 of 1948.

Court-Fees Act (*VII of* 1870), *section* 7 (*IV-A*)—*Quondam minor impeaching a decree to which he was a party through his guardian—Necessity to sue for setting aside the decree.*

A quondam minor impeaching a decree to which he was a party through a guardian is bound to sue to set aside the decree and liable to pay court-fee under section 7 (IV-A) of the Court-Fees Act.

(1941) 1 M.L.J. 800 : I.L.R. 1941 Mad. 775 (F.B.), relied on.

N. Rajagopala Aiyangar for Petitioner.

The Government Pleader (*K. Kuttikrishna Menon*), *K. V. Ramachandra Aiyar*, *T. S. Venkatarama Aiyar* and *S. V. Venugopalachari* for Respondent.

K. S. *Petition dismissed.*

Raghava Rao, J.
27th April, 1950.

Fathimunnissa Begum *v.* Rabia Bibi Saheba.
S. A. No. 1321 of 1947.

Specific Relief Act (*I of* 1877), *section* 42—*Co-sharers—Suit by one sharer for declaration that he is entitled to half share—Maintainability—Prayer for relief of partition—If essential.*

Where the plaintiff is in joint possession of immoveable property whether such possession be actual possession of his share of the whole or actual possession of a part coupled with constructive possession of the remainder, he is entitled to maintain a suit for declaratory relief with a view to remove a cloud on his title created by the Act of the defendant disputing plaintiff's share (for instance by issuing a notice). In a suit so framed, declaration of title is all that the plaintiff needs and he is consequently not called upon to ask for consequential relief by way of partition especially if down to the date of suit the plaintiff was in perception of his share of the rents and profits.

65 I.C. 8, relied on. I.L.R. 25 Mad. 504, distinguished.

M. S. Venkatarama Ayyar and *N. C. V. Ramanujachari* for Appellant.

V. Suryanarayana for Respondent.

K. S. *Appeal allowed and remanded for rehearing. Leave refused.*

Somasundaram, J.
27th April, 1950.

Pachayappa Chettiar *v.* President, Panchayat Board, Vaitheswarankoil.
Cr. R. C. No. 1096 of 1949.
(Cr. R. P. No. 1029 of 1949).

Madras Local Boards Act (*XIV of* 1920), *Schedule VII, clause* (*k*)—*Scope*—Vedapatasala *where students are lodged and fed—If within scope of clause—Licence if necessary—Conviction under sections* 193 *and* 207 *unsustainable as no licence is necessary.*

A *vedapatasala* where boys who learn *vedas* are lodged and fed, which is not run for profit but is a private trust endowed for the purpose of encouraging young boys to study Sanskrit and *vedas*, does not come within the scope of clause (*k*) of Schedule VII of the Madras Local Boards Act. Section 193 of the Act applies only to cases where institutions are run for profit and not to such charitable institutions as *vedapatasalas*. It is therefore exempt from taking out a licence. A conviction for not taking out a licence in such a case is therefore unsustainable.

K. Gopalachari and *K. Srinivasan* for Petitioner.

R. Sundaralingam for Respondent.

The Assistant Public Prosecutor (*A. S. Sivakaminathan*) on behalf of the State.

K. S. *Petitioner acquitted.*

Rajamannar, C.J. and Somasundaram, J.
11th July, 1950.

Rangaswami Naidu, *In re.*
C. M. P. No. 5500 of 1950.

Madras Buildings (Lease and Rent Control) Act (XV of 1946), *section* 7—*Applicability —Provision in lease deed for payment of compensation for breach of any of the terms of the lease —Does not take away from landlord the right to evict on default in payment of rent.*

The fact that the lease deed provides for payment of compensation for the breach of any of the terms of the lease cannot take away from the landlord the right which he has under section 7 of the Madras Buildings (Lease and Rent Control) Act to evict the tenant. It is not necessary that there should be a specific provision for re-entry in the lease deed, because the application by the landlord is not in exercise of any right given by the terms of the lease deed or by the provisions of the Transfer of Property Act, but in exercise of the right given to him under section 7 of the Madras Buildings (Lease and Rent Control) Act.

(1949) 2 M.L.J. 694, distinguished.

S. A. Seshadri Ayyangar and *G. Ramalinga Reddi* for Petitioner.

K. S. *Application to quash proceedings dismissed.*

Rajamannar, C. J. and Somasundaram, J.
12th July, 1950.

Electro Mechanical Industries, Madras *v.* The Industrial Tribunal No. 2 for Engineering Firms and Type Foundries, Madras.
C. M. P. Nos. 9473 and 9474 of 1949.

Industrial Disputes Act (XIV of 1947), *sections* 7 *and* 10—*Tribunal set up under—Jurisdiction and powers—Power to order management to refund wages deducted under section* 9 (2) *of Payment of Wages Act (IV of* 1936)—*Dearness allowance—Fixing of—Tribunal if entitled to rely on data otherwise than from evidence adduced—Conclusions of Tribunal—Merits of—If can be gone into in* certiorari *proceedings.*

The Industrial Tribunal having held that the management was entitled to punish the men who went on strike on a particular day (holding that the strike was not legal), however considered that the cut of eight days' wages was too severe a punishment and that justice would be met if a punishment of one day's cut of wage and dearness allowance is imposed instead. The Tribunal accordingly directed the difference to be refunded to the workers. In an application by the management for issue of a writ of *certiorari* to quash the award, it was contended that (1) the Tribunal had no jurisdiction to order the refund once it has found that the strike was not justified and (2) that as the Payment of Wages Act provided for adequate remedy in respect of claims arising out of deduction from wages, the Industrial Tribunal had no jurisdiction to order refund for any period.

Held : (i) As the dispute regarding the deduction was referred to the Tribunal for decision, it was open to it to hold that the wages for a lesser number of days than claimed by the workers should be returned.

(ii) The jurisdiction of the Industrial Tribunal set up under the Industrial Disputes Act is not excluded by the provisions of the Payment of Wages Act providing other remedy. The Tribunal contemplated by section 15 of the Payment of Wages Act is not, one which could affect the jurisdiction of the Tribunal set up under section 7 of the Industrial Disputes Act. The Tribunal set up under the Industrial Disputes Act has a much wider jurisdiction.

(iii) Quasi judicial tribunals like the Industrial Tribunal, not hampered by the rules of evidence applicable to proceedings in a court of law, would be entitled to rely on data available to it otherwise than from evidence adduced on behalf of the parties and it is not open to the Court in an application for issue of writ of *certiorari* to go into the merits of the conclusion of the Tribunal as to the rate of dearness allowance awarded.

T. L. Venkatarama Aiyar and *M. Ramachandran* for Petitioner.

K. Veerasami for the Government Pleader (*K. Kuttikrishna Menon*) for the Tribunal and *I. A. Salam* for the Workers' Union.

K. S. *Application dismissed.*

N R C

Panchapagesa Sastri, J. Narayana Naik, *In re.*
13th July, 1950. Cr.R.C. No. 1114 of 1949.
(Cr.R.P. No. 1047 of 1949).

Essential Supplies (Temporary Powers) Act (XXIV of 1946), *Section* 7—*Issuing receipts to customers without noting full address or noting licence number of shop in the counterfoil—Offence*—Mens rea—*Proof of ulterior corrupt motive—If essential.*

The accused who had sold rice issued receipts to three purchasers. But the addresses of the persons were not noted though the names were given and also the licence number of the shop was not found in the counterfoil kept by the accused. The accused having been convicted by the Courts below contended in revision that on the facts there was no *mens rea* :

Held : As the petitioner did the act knowing that it was contrary to law, the profit motive or anything analogous to it is not essential to constitute *mens rea* : What the law requires is only a conscious violation of the rule and if a person deliberately did a thing with the knowledge that what he was doing was a crime, then it cannot be said that he has not got a guilty mind. No proof is necessary of some ulterior corrupt motive on the part of the accused such as some financial profit for himself or for some persons in whom he was interested.

M. K. Nambiar for Petitioner.

The Assistant Public Prosecutor (*A. S. Sivakaminathan*) on behalf of the State.

K.S. ——— *Petition dismissed.*

Subba Rao and Panchapakesa Ayyar, JJ. Varasuki & Co. v. Province of Madras.
13th July, 1950. Appeal No. 811 of 1947.

Madras General Sales Tax Act (IX of 1939)—*Exemption of salt from sales tax—If extends to the sales and purchases of gunnies in which they are packed.*

Any exemption of any article from sales tax must be strictly construed and confined to the exemption itself and not extended. Thus, if salt is exempted, the gunny bags in which it is packed and sold is not exempted and must be included in the definition of "turn-over" under the rules. The question whether there was " profit " or " loss " in respect of the gunnies is irrelevant for purposes of sales tax. If a man is a " dealer " in " goods " he will be liable to pay sales tax on his " turnover " even if he has suffered a loss.

[The Government have since exempted the price of gunny bags in which salt is packed from Sales tax.]

M. Subbaraya Aiyar for Appellant.

The Government Pleader (*K. Kuttikrishna Menon*) for Respondent.

K.S. ——— *Appeal dismissed.*

Subba Rao, J. Ali Kutty *v.* Madhava Menon.
14th July, 1950. C. R. P. No. 155 of 1949.

Malabar Tenancy Act (XIV of 1930), *Section* 3 (*w*) (1)—" *Verumpattam* "—" *Wet land* " *meaning* " *land adapted for cultivation of paddy* "—*Dry land cultivated with* " *Modan paddy* "—*If* " *wet land* ".

In the Malabar Tenancy Act "Wet land" is defined to mean "land which is adapted for the cultivation of paddy". A person who came into possession under a *verumpattam* chit, of certain dry land wherein ginger, millets, gingelly, Modan paddy were grown in different portions of the land in different years cannot be said to be a tenant within the meaning of Madras Act XIV of 1930 entitled to stay under Madras Act XVII of 1946.

The word paddy in the definition of " wet land " in Malabar Tenancy Act must be confined to that kind of grain which is understood by the people of the locality as paddy in the ordinary sense of the term. The definition of " wet land " in the Act is not intended to cover land wherein only Modan paddy—a species of dry crop—is raised. It cannot be said that the land is adapted for the cultivation of paddy to come under the definition of " wet land ".

N. R. Sesha Aiyar for Petitioner.

S. Venkatachala Sastri for Respondent.

K.S. ——— *Petition dismissed.*

Rajamannar, C.J. and Somasundaram, J. Nathamooni Chetty *v.* Viswanatha Sastri.
19th July, 1950. C.M.P. No. 10278 of 1949.

Practice—Issue of prerogative writs—Long delay since passing of orders sought to be quashed—Power to issue will not be exercised.

Though there is no specific period of limitation, it has generally been the accepted practice of this Court not to exercise the extraordinary power by way of the issue of prerogative writs (e.g. *certiorari*) when there has been a long delay since the passing of the order sought to be quashed.

C. A. Vaidyalingam and *A. Duraiswami Ayyangar* for Petitioner.

V. Ramaswami Iyer and *T. R. Ramachandran* for first Respondent.

K.S. *Application dismissed.*

Rajamannar, C.J. and Somasundaram, J. Gopal *v.* Industrial Tribunal, Madras.
20th July, 1950. C.M.P. No. 9685 of 1949.

Industrial tribunal—Decision as to propriety of closure of concern on account of loss—Jurisdiction to order payment of gratuity to workmen.

It cannot be said that a direction to pay gratuity to the workmen is beyond the jurisdiction of the Industrial Tribunal which is called upon to decide the propriety of a closure of the concern on account of loss sustained.

Payments such as bonus or gratuity which though strictly cannot be part of the contract between the parties nevertheless have been regarded impliedly as part of the terms of employment in an industrial concern.

S. Suryaprakasam and *A. S. Prakasam* for Petitioner.

T. K. Raman Nambissan for the Advocate-General instructed by the Government Solicitor, *R. Dandapani* and *R. Gopalan* for Respondents.

K.S. *Application dismissed.*

Rajamannar, C.J. and Somasundaram, J. Mahmad Beary *v.* Hassan Kutty.
24th July, 1950. C.M.P. No. 858 of 1950.

Constitution of India (1950)—*Article* 226—*Application for issue of* writ of certiorari *to quash order which had become final long before Article* 226 *came into force—Not sustainable.*

Where an order sought to be quashed by the issue of a *writ of certiorari* became final long before the coming into force of Article 226 of the Constitution of India, the application for issue of the writ is not sustainable. A subsequent enactment like Article 226 of the Constitution cannot operate to take away a vested right which had accrued to the party. I.L.R. (1943) Mad. 501 and (1945) 1 M.L.J. 480 relied on.

N. Kotiswara Rao for Petitioner.

A. Narayana Pai for Respondent.

K.S. *Application dismissed.*

Govinda Menon and Basheer Ahmed Sayeed, JJ. Rama Ambalam, *In re.*
25th July, 1950. Cr.R.C. No. 91 of 1950.
(Cr.R.P. No. 84 of 1950).

Criminal trial—Charge of a graver offence—Right to convict for a lesser offence which is a constituent part of the graver offence—Criminal Procedure Code (*V of* 1898), *section* 238 (1)—*Applicability.*

A Court or a Jury is entitled when the charge is for the graver offence to find the delinquent guilty of the constituent parts of that offence. In a trial for an offence under section 392 read with section 397 of the Penal Code it is open to the Jury to find the accused guilty of an offence under section 326 of the Penal Code. [Statutory provisions and case law discussed]. I.L.R. 26 Mad. 243 followed.

But an offence under section 379 of the Penal Code cannot be said to be one of the component parts constituting the major offence under section 394 of the Penal Code. Nor can it be said that the offence under section 379 is a minor offence in relation to section 394 of the Penal Code. A conviction of the accused under section 379 when there was no separate charge framed for that offence is illegal and the convictions and sentences must be set aside.

C. K. Venkatanarasimham for Petitioners.

The Public Prosecutor (*V. T. Rangaswami Aiyangar*) on behalf of the State.

K.S. *Conviction of first accused confirmed but sentence reduced and conviction of other accused set aside.*

Panchapagesa Sastri, J. Devanugraham, *In re*,
25th July, 1950. Cr. Appeal No. 728 of 1949.

Prevention of Corruption Act (II of 1947)—Sanction for prosecution—Essentials.

For the validity of a sanction to prosecute a person under the Prevention of Corruption Act, there should be evidence either from the order granting the sanction or other documentary evidence placed before the court or even oral evidence that the facts were placed before the officer from whom sanction was sought. Where the order according sanction refers to the particular offence for which sanction is being accorded (receiving legal gratification) and also the name of the person, but apart from these, there is nothing to indicate that the facts which are said to have given rise to the offence were placed before the officer, the sanction is not legal and a conviction based on it cannot stand.

V. Rajagopalachari and *R. Purushotham* for accused.

The State Prosecutor (*Govind Swaminathan*) on behalf of the State.

K.S. *Conviction set aside.*

[*Full Bench.*]

Rajamannar, C.J., Viswanatha Sastri and Somasundaram, JJ. Champakam Dorairajan *v.* State of Madras.
27th July, 1950. C.M.P. No. 5255 and 5340 of 1950.

Constitution of India (1950), Articles 15 and 29 (2)—Fundamental rights—If violated by Madras Communal G. O. regarding admission to Colleges.

Article 15 (1) of the Constitution of India in unambiguous terms declares that the State shall not discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them. "Discriminate against" means "make an adverse distinction with regard to", "distinguish unfavourably from others." What the article says is that no person of a particular religion or caste shall be treated unfavourably when compared with persons of other religions and castes merely on the ground that he belongs to a particular religion or caste. Under the Communal G.O. the qualifications which enable a Brahmin candidate to secure a seat in a college would be higher than the qualifications which would enable a person of another caste or religion to secure admission. There is discrimination against Brahmins and the petitioners' applications for admission should be considered without any discrimination being made against them on grounds of religion, race or caste.

Per Viswanatha Sastri, J.—The Communal G.O. violates Article 15 (1) of the Constitution. It statedly classifies students seeking admission to State Colleges, on the basis of caste and religion and allots a definite number of seats to students belonging to particular castes or communities irrespective of their merit. It makes caste and religion a ground of admission or rejection. In its working it results in the adoption of different qualifications and different standards for students seeking admission to the same institution according to their caste, community or religion. By its allotment of a fixed number of seats to students of a particular caste or community the Communal G.O. denies equal treatment for all citizens under like circumstances and conditions, both in the privileges conferred and disabilities imposed. In its effect and operation the Communal G.O. discriminates very markedly against members of a particular caste and shuts out students having high qualifications solely on the ground of their caste or religion and lets in others with inferior qualifications on the same ground.

The Communal G.O. is subversive of the basic provisions of the Constitution.

V. V. Srinivasa Ayyangar, Alladi Krishnaswami Ayyar, N. Rajagopala Ayyangar, V. Sethuraman and *V. Devarajan* for Petitioners.

The Advocate-General (*K. Kuttikrishna Menon*) instructed by the Government Solicitor on behalf of Respondent.

K.S. *Petitions allowed.*
Certificate of fitness for leave to appeal to Supreme Court granted.

Raghava Rao, J.
13th July, 1950.

Ramakrishna Rao *v.* Province of Madras.
S. A. No. 1608 of 1947.

Madras Land Encroachment Act (III of 1905), *section* 7—*Cart track running through patta land held from a Zamindar—Government, if entitled to.*

When cart tracks run through patta lands held from a Zamindar which have not been separately demarcated as poramboke it must be regarded as part of the patta lands and not the property of the Government. Cart tracks in Zamindaris presumably belong to the Zamindar concerned and *prima facie* the reversionary right relating to them vest in him.

V. Subramanyam for Appellant.

Eradi for the Government Pleader (*P. Satyanarayana Raju*) for Respondent.

K.S. *Appeal allowed. No leave.*

Satyanarayana Rao and Chandra Reddi, JJ.
18*th July*, 1950.

Thripurasundara Rao *v.*
Kotayya.
Appeal No. 359 of 1949.

Adverse possession—Adverse possession extinguishing title of a Hindu widow—Surrender by Hindu widow—If entitles the surrenderee to recover possession from person in adverse possession.

It has been the settled law so far as this Court is concerned that if a widow alienates a portion of her husband's estate for purposes not binding on the estate and then surrenders the estate, the surrenderee would not be entitled to question the alienation and recover possession of the property until the death of the surrendering widow or the other limited owner. [39 Mad. 1035]. There is no difference in principle between the case of an alienation and a case where the title of the limited owner became extinguished by operation of the statute of limitation. By reason of that adverse possession for more than twelve years, the title of the limited owner became extinguished by virtue of section 28 of the Limitation Act and the adverse possessor acquired a title good against the limited owner. By virtue of the surrender, if the surrenderee is not allowed to displace the title of an alienee holding the property under an alienation which was not for a necessary and binding purpose, it stands to reason that on the same analogy a person who had acquired title by adverse possession must also be protected. By adopting the device of surrendering the estate the widow cannot get round the effect of her inaction in not suing within time to recover possession of the property. 52 M.L.J. 634, relied on. Accordingly the surrenderee would not be entitled to recover possession of the property until after the death of the widow.

[The possession of the defendant in this case however was found to be permissive and that it was with the consent of the widow. It was therefore open to the widow to terminate that permissive possession and for the surrenderee to recover the property.]

G. Venkatarama Sastri for Appellant.

P. V. Chalapati Rao for Respondent.

K.S. *Appeal allowed.*

Govinda Menon, J.
21*st July*, 1950.

Muhammad Kutty *v.* Choyi Kutty.
C. R. P. Nos. 1519 and 1520 of 1949.

Provincial Small Cause Courts Act (IX of 1887), *section* 25—*A finding that Court has jurisdiction to try a small cause suit—If revisable.*

A finding on a preliminary point that the Court has jurisdiction to try a small cause suit cannot be said to be a decree or order made by the Court of Small Causes

and is not revisable under section 25 of the Provincial Small Cause Courts Act. (1938) 1 M.L.J. 61, relied on.

B. Pocker and *P. A. Q. Meeran* for Petitioner.

K. P. Ramakrishna Aiyar for Respondent.

K.S. *Petition dismissed.*

Subba Rao and Panchapakesa Ayyar, JJ. Sankaranarayana Ayyar *v.* State of Madras.
28*th July*, 1950. Appeal No. 189 of 1947.

Crown—Suit against for damages for wrongful dismissal—Sounds in tort and not maintainable.

A suit for damages for wrongful dismissal against the Crown sounds in tort and would not lie against the Crown. The right to sue does not survive on the death of the plaintiff in such a case.

M. S. Venkatarama Aiyar and *K. V. Sankaranarayana Aiyar* for Appellant.

The Government Pleader (*P. Satyanarayana Raju*) and *T. K. Raman Nambisan* for Respondent.

K.S. *Appeal dismissed.*

Mack, J. Kandaswami Mudaliar, *In re.*
28*th July*, 1950. C. R. P. Nos. 855 to 857 of 1950.

Practice—Small Cause suits taken by consent of parties on to the Original Side and tried along with another original suit by the same plaintiff against another defendant and having common defences—Proper procedure—Revision by the plaintiff—If competent.

A small cause suit loses its character as such immediately it is withdrawn to the Original Side and tried along with an original suit. Such a small cause suit cannot continue in the category of small causes once it is taken on to the Original Side and disposed of along with an original suit. When this is done the small cause suit should be renumbered as an original suit and revision petitions against the decision in the suits will not lie to the High Court but only regular appeals to the District Court will lie and the ordinary *ad valorem* Court-fee should be paid on such appeals.

In filing appeals against a common judgment it would be quite sufficient to file only one copy of the judgment for all the appeals with of course separate decree copies. Leave of the Court could be quite easily obtained to file only one copy of the judgment for appeals arising out of it.

B. V. Viswanatha Aiyar for Petitioner.

K. S. *Papers returned.*

Somasundaram, J. Muruga Konar and Sons, *In re.*
28th July, 1950. Cr. R. C. No. 689 of 1949.
(Cr. R. P. No. 634 of 1949).

Essential Supplies (Temporary Powers) Act (XXIV of 1946), *section* 7—*Scope—Prosecution for importing Kesari* Dhall *in contravention of Kesari* Dhall *Prohibition of Import Order*, 1945—*Sale proceeds of property seized returned to accused after trial without there being any order of forfeiture—Magistrate taking bonds for return of the amounts if called upon to do—Legality—Magistrate calling for return of the amount on instructions from Government—Propriety and legality.*

Under section 7 of Act XXIV of 1946, it is only the Court trying the contravention of the rules that may direct that any property in respect of which the Court is satisfied that the order has been contravened, shall pass an order of forfeiture.

Where there was no order of forfeiture after conviction of certain persons for importing Kesari *Dhall* in contravention of Kesari *Dhall* Prohibition of Import Order the Magistrate returned to the accused the sale proceeds of the dhall seized and took a bond from the accused undertaking to return the property whenever called upon to do so, the action of the Magistrate falls under section 523 (2) of the Criminal Procedure Code though he purported to act under section 516-A of the Code. As there was no order of forfeiture at the time of conviction an order for return of the amount by the accused cannot be sustained. Further, the Magistrate stated in the order calling upon the accused to return the amount " on instructions from Government." It is improper on the part of the Government to send instructions to the Magistrate to act in a particular manner. It is a wrongful interference with the due administration and course of justice.

K. S. Jayarama Ayyar and *C. K. Venkatanarasimham* for Petitioners.

The Assistant Public Prosecutor (*A. S. Sivakaminathan*) on behalf of the State.

K.S. — *Petition allowed.*

Rajamannar, C.J. and Viswanatha Sastry, J. — Tata Iron and Steel Co., Ltd., *In re.*
1st August, 1950. — C. M. P. No. 6230 of 1950.

Madras Shops and Establishments Act (*XXXVI of* 1947), *section* 41—*Order terminating services of employee on the ground of non-requirement of his services—Ground if can be said to be reasonable.*

Where the only ground for terminating the services of an employee was non-requirement the only question for the appellate authority was to determine whether that ground can be said to be a reasonable cause. The tribunal cannot go into the question whether the employee was guilty of misconduct as alleged by the employer for the first time before the tribunal.

G. Ramakrishna Ayyar and *P. Narayanaswami* for Petitioner.

K.S. — *Application dismissed.*

Subba Rao and Panchapakesa Ayyar, JJ. — Commissioner of Income-tax, Madras *v.*
2nd August, 1950. — V. P. Rao.
Case Referred No. 26 of 1946.

Income-tax Act (*XI of* 1922), *section* 4 (3) (vii)—*Remuneration received by assessee for acting as an arbitrator—If exempted from assessment.*

Fee or remuneration got by the assessee for acting as an arbitrator would fall within the scope of the word " income " in section 6 of the Income-tax Act. A receipt arising from business, or the exercise of a profession vocation or occupation will not come within the exception in section 4 (3) (vii) of the Income-tax Act. The amounts received as arbitrator were receipts of the assessee arising from his " occupation " as arbitrator in the said proceedings. Receipts got as remuneration by a person, who is not already having the occupation of arbitrator or being appointed as an arbitrator will, be receipts arising from the exercise of the occupation of an arbitrator even though it had been exercised only once. Where the performance of the service as arbitrator and the remuneration for that occupation was agreed already before the occupation was taken on, it cannot be said that the remuneration was a windfall or casual income exempt from assessment.

1943 I.T.R. 390, distinguished.

C. S. Rama Rao Sahib for Applicant.

A. Ramachandran and *G. Gopalakrishnan* for Respondents.

K. S. — *Reference answered.*

Rajamannar, C.J. and Viswanatha Sastri, J. — Balasaraswathi Ltd., *In re.*
4th August, 1950. — C. M. P. Nos. 6470, 6471, 6474 and 6475 of 1950.

Motor Vehicles Act (*IV of* 1939) *section* 58 *and G. O.* 2867 *of 22nd, June,* 1950—*Not applicable to temporary permits.*

Section 58 of the Motor Vehicles Act has no application to temporary permits. The renewal which is referred to in sub-section (2) of section 58 can only be a

renewal of a permanent permit for a specified period. Rules 182 and 189 make it amply clear that the applications for renewal contemplated under the Act and the rules are applications for renewals of permanent permits and not of temporary permits. The issue of temporary permits does not confer any right on the person to whom it is issued to have a renewal of it. G. O. 2867 of 22nd June, 1950, passed under powers conferred by section 43-A of the Motor Vehicles Act does not have any reference to the issue of temporary permits.

K. S. Jayarama Iyer, *Padmini Raghavan* and *C. K. Venkatanarasimham* for petitioners.

K. S. ——— *Applications dismissed.*

Govinda Menon, J. Mohamed Sahib, *In re.*
4th August, 1950. Cr. M. P. No. 518 of 1950.

Essential Supplies (Temporary Powers) Act (XXIV of 1946), *sections* 3 *and* 4—*Power to fix prices of essential commodities—Delegation by Central Government to Provincial Government—Further delegation by Provincial Government to its subordinate—Validity—Notification of price fixed in District Gazette—Validity—Contravention—If offence.*

The power to fix the prices for the sale and purchase of essential commodities must be exercised only by the Provincial Government to which it has been delegated and it can do so by a notified order as required under section 3 of the Central Act, XXIV of 1946. The fixation of prices is the very core of the control of prices at which commodities can be bought or sold. That being so that power can be exercised only by the Provincial Government to whom it has been delegated by the Central Government. Such power cannot be further delegated by the Provincial Government to any authority subordinate thereto like the District Collector. Such being the case, the notification of the Government of Madras in G.O. No. 950, Food and Agriculture, dated 12th September, 1949, published at page 874, Part II, *Fort St. George Gazette*, authorising the Collectors to fix the wholesale and retail prices at which sugar could be sold cannot be valid nor according to law. A notification in the District Gazette by the Collector fixing prices at which sugar can be sold, is not legal and the publication in the District Gazette cannot be said to be publication in the Official Gazette (the *Fort St. George Gazette* being the Official Gazette of the Province). A sale at a price higher than that notified by the Collector and published only in the District Gazette cannot be the subject-matter of a prosecution for contravention of the notification. The order of the Provincial Government authorising the Collector to fix the prices is illegal and not operative. The notification of prices fixed by the Collector in the District Gazette also is wholly invalid and inoperative.

V. Rajagopalachari and *S. Rajaraman* for Petitioner.

The State Prosecutor (*Govind Swaminathan*) for the Public Prosecutor on behalf of the State.

K. S. ——— *Charge quashed.*

Somasundaram, J. Hanumanthaiah *v.* Health Officer, Kurnool.
4th August, 1950. Cr. R. C. No. 655 of 1950.
(Cr. R. P. No. 602 of 1950).

Madras Public Health Act (III of 1939), *section* 108 (1) (*b*)—*Scope—Sale of gram otherwise than for human consumption—If liable under section* 108 (1) (*b*).

It is only when a person sells defective articles like gram for human consumption, he would be liable under section 108 (1) (*b*) of the Madras Public Health Act. In the absence of proof that the accused were selling such grams for human consumption, his conviction cannot be sustained.

S. Krishnamurthy for Petitioner.

Mrs. J. Sitamahalaxmi for respondent.

The Public Prosecutor (*V. T. Rangaswami Ayyangar*) on behalf of the State.

K. S. ——— *Petition allowed.*

Raghava Rao, J. Coimbatore Municipality *v.* Govindayyar.
11th July, 1950. S. A. No. 1411 of 1947.

Madras District Municipalities Act (*V of* 1920), *section* 354, *Proviso—Action of municipality capricious and arbitrary in adopting valuation of property for assessment—Suit by owner of house challenging the assessment and for refund of amount paid—Not barred.*

Where the action of a Municipality is capricious and arbitrary in adopting valuation of property for assessment it cannot be said that the provisions of the Madras District Municipalities Act have been complied with by the municipality in substance or in effect. The mere fact of the existence of a right of appeal under the provisions of the Act against the assessment by the municipality does not necessarily oust the jurisdiction of the civil Court to entertain a suit in challenge thereof.

(1949) 2 M.L.J. 629 and (1948) 2 M.L.J. 111, considered and distinguished.

K. Kuttikrishna Menon and *C. Vasudeva Mannadiar* for Appellant.

K. V. Ramachandra Aiyar for Respondent.

K. S. *Appeal dismissed. Leave to appeal refused.*

Viswanatha Sastri, J. Krishnaswami Gounder *v.* Ramakrishna Reddiar.
14th July, 1950. S. A. No. 1506 of 1947.

Mortgage—Usufructuary mortgage—Loss of possession of some of the items—Rights of usufructuary mortgagee.

It is open to a usufructuary mortgagee who is dispossessed of a portion of the mortgaged property to continue in possession of the rest of the property treating the mortgage as a subsisting transfer, in which event, his only remedy would be by way of compensation for breach of the implied covenant for title and security of possession. Such a suit for damages or compensation must be brought within the period limited by Article 116 of the Limitation Act. The compensation payable by the mortgagor to the usufructuary mortgagee does not become part of the mortgage debt secured on the property. Where the mortgagee by his conduct waived his right to claim any compensation for the loss of possession of a portion of the mortgaged properties he must submit to redemption according to the terms of the mortgage (there being no stipulation for payment of interest) on payment of the principal money. The mortgagee cannot be permitted in such circumstances to pile up interest in the shape of damage or damages in the shape of interest for a long period and add the same to the mortgage money thus making redemption extremely onerous.

S. Jagadisa Aiyar for Appellant.

S. Rangaswami Ayyangar for Respondent.

K. S. *Appeal allowed. Leave to appeal refused.*

Subba Rao and Panchapakesa Ayyar, JJ. Maginlal Hiralal Gavai *v.*
19th July, 1950. Puspa Ben J. Patel.
Appeals Nos. 678 and 799 of 1947.

Tort—Negligence—Owner and occupier of cinema premises—Liability to persons attending show injured by collapse of wall—Basis of.

Where persons entering a cinema after purchasing tickets are injured by the collapse of a wall the person running the cinema is liable for damages as occupier of the premises on the basis that the persons entering the cinema were invitees. The duty of the occupier of the premises on which the invitee comes, is to take reasonable care that the premises are safe, and to prevent injury to the invitee from unusual dangers which are more or less hidden, of whose existence the occupier is aware or ought to be aware or, in other words, to have his premises reasonably safe for the use that is to be made of them.

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The Advocate-General (*K. Kuttikrishna Menon*) and *K. P. Raman Menon* for Appellant.

V. Ramaswami Aiyar, V. Meenakshisundaram and *P. K. Narayanaswami* for Respondents.

K. S. ——— *Appeal dismissed.*

Subba Rao and Panchapakesa Ayyar, JJ. State of Madras *v.* Maharaja of Pithapuram.
2nd August, 1950.
Appeals No. 120 of 1947.

Alluvion and diluvion—Lankas in Godavari river—" Ownership "—Bed of river—If vested in Government or adjoining owner—Tests.

The bed of a navigable river in any part of India, whether tidal or not, is vested in the Government unless it has been granted to private individuals. To create a title in the Government the river should be navigable at that part of it where the disputed plots are situated.

The ownership of the bed of the river would depend upon its character at the time of the grant of adjacent land to the individual claiming it.

A river in India is not navigable in the legal sense, unless it is navigable throughout the year.

Facilities for passage of large river crafts which may not be capable of rising to the dignity of ships seem to be generally considered sufficient to call a river affording such facilities a " navigable " river.

[The part of the river Godavari-Vynathayna on the western side of the village Patha Gannavaram must have been (on the evidence) a navigable river at the time of the grant to the Zamindar and accordingly the river bed belonged to the Government. The suit lankas were found to be lateral accretions to the main land and therefore the Zamindar was entitled to them.]

The Government Pleader (*P. Satyanarayana Raju*) for Appellant.

A. Sundaram Aiyar, K. V. Rangachari and *Ch. Ramakrishna Rao* for Respondents.

K. S. ——— *Appeal dismissed.*

Subba Rao and Panchapakesa Ayyar, JJ. Veeraraghavalu *v.* Government Metcalfe Hostel.
3rd August, 1950.
Appeals Nos. 588 of 1946 and 345 of 1947.

Deed—Construction—Creation of trust in praesenti*—Test.*

A document provided *inter alia* as follows :—" I intend to give as gift the said properties, which are worth Rs. 4,000 for carrying on boarding (arrangements) of poor Hindu boys, who are residing in the said hostel, and who are reading in the F.A. and the B.A. classes, without distinction of caste, and have decided to carry out the arrangements subject to the conditions mentioned hereafter."

Held, there is a sufficient declaration of trust intended to be created by the executant of the deed. The document created a present trust and subsequent settlement of portions of the properties covered by the deed on others could not confer any rights on them.

P. Satyanarayana Raju and *E. Venkatesam* for Appellants.

N. Bapi Raju, V. Parthasarathi and *G. Chandrasekhara Sastri* for Respondents.

K. S. ——— *Appeals dismissed.*

Balakrishna Aiyar, J. Hameed *v.* Mathukondal.
3rd August, 1950. C. R. P. No. 2089 of 1949.

Civil Procedure Code (V of 1908), *Order* 9, *rule* 4*—Order dismissing a suit for default set aside and a day appointed for proceeding with the suit—Notice of fresh date of hearing—Defendant if entitled to be given.*

When an application for restoration of a suit (dismissed for default) is contested the defendant will be present in person or through his Advocate and no notice

of the day appointed for proceeding with the suit will have to be given, because that date would be announced in Court. But to contend that the defendant is not entitled to notice in those cases when he is absent merely because he did not oppose the application for restitution of the suit would be to penalise a person who does not want to be contankerous. In such circumstances notice should be given.

U. Somasundaram for Petitioner.

R. Kesava Aiyangar for Respondent.

K.S. ——— *Petition dismissed.*

Viswanatha Sastri and Balakrishna Ayyar, JJ. Venkama Naidu *v.* Syed Vilijan Chisty.
4th August, 1950. Appeal No. 58 of 1947.

Specific Relief Act (I of 1877), section 41—Discretion of Court setting aside a sale deed by the guardian of a Mahomedan minor to order compensation to be paid.

The language of section 41 of the Specific Relief Act is very wide and gives a large discretion to the Court to make an order for compensation if the ends of justice require such compensation to be awarded where the Court adjudges that a deed is void. The Court has power to award compensation to the alienee if it considers it just and equitable to do so in the circumstances of the case.

Where at the instance of a quondam Mahomedan minor a sale by his mother as guardian is set aside and the minor has benefited by the sale, it is proper to direct him to pay compensation before the cancellation of the sale deed.

C. A. Vaidyalingam, P. Ramachandra Reddi and *K. Ramachandra Rao* for Appellants.

B. Pocker for Respondents.

T. Venkatadri, Court-guardian for 6th Respondent.

K.S. ——— *Decree varied.*

Raghava Rao, J. Subramaniam Chettiar *v.* Srinivasa Ayyar.
4th August, 1950. C. R. P. No. 105 of 1947.

Civil Procedure Code (V of 1908), section 44—Decree passed by Munsifs' Courts in Travancore State—Transfer to Presidency Small Cause Court, Madras, for execution—Jurisdiction of Small Cause Court to execute.

Section 44, Civil Procedure Code, is not one of the sections included in section 8, Civil Procedure Code, nor has section 44, Civil Procedure Code, been made applicable to the Presidency Small Cause Court. As section 44 empowering British Indian Courts to execute the decree of notified Indian States has not been made applicable to the Presidency Small Cause Court that Court has no jurisdiction to execute a decree passed by a Munsif's Court in Travancore and transferred to the Presidency Small Cause Court for execution. 33 M.L.J. 532 *obiter* not followed.

Quære :—If decree in question is not a foreign judgment under the present Constitution.

No question of the interpretation of the Constitution arises at present and leave for appeal to the Supreme Court must be refused.

N. Sivaramakrishna Aiyar and *V. S. Mayilerumperumal* for Petitioner.

M. S. Varadacharya for Respondent.

K.S. ——— *Petition dismissed.*

Basheer Ahmed Sayeed, J. Vuddandam *v.* Venkatakameswara Rao.
9th August, 1950. C. R. P. No. 1732 of 1948.

Sale of land—Seller not in a position to give vacant possession—Buyer's right to rescind.

If the buyer has legitimate expectation of vacant possession and if such possession is not forthcoming then the buyer is entitled to rescind the contract. A buyer who can prove that a seller is disabled from performing his promise in its entirety,

is justified in putting an end to that contract. He can rescind the contract and claim the advance that has been paid.

V. Rangachari for Petitioner.

B. V. Ramanarasu for Respondent.

K.S. — *Petition allowed.*

Govinda Menon and Basheer Ahmed Sayeed, JJ. Ramaswami Chetty *v.* Venkatarama Reddi.
10th August, 1950. A. A. O. No. 64 of 1948.

Executing Court—If can fix rate of interest where decree sought to be executed directs payment of interest but does not stipulate any rate of interest—Procedure to be adopted by decree-holder.

If a decree directs the payment of interest but does not stipulate the rate of interest payable it is not open to the executing court to fix any reasonable rate of interest and direct the payment of that interest to the decree-holder. The non-fixation of the rate of interest should be deemed to have been a mistake committed by the officer who was responsible for the drafting of the decree and it is open to the transferee decree-holder to apply to the Court which passed the decree to have that decree amended and brought into conformity with the intention as gatherable from the passing of the final decree and if the Court amends the decree by allowing a reasonable rate of interest it is open to the assignee decree-holder to execute the same against the charged properties.

S. A. Seshadri Aiyangar for Appellant.

C. A. Vaidyalingam and *K. Ramachandra Rao* for Respondent.

K.S. — *Appeal allowed.*

Subba Rao and Panchapakesa Ayyar, JJ. Venkataswami, *In re.*
10th August, 1950. C. M. P. Nos. 4278 and 4279 of 1950.

Court-Fees Act (*VII of* 1870), *Article* 5—*Application for review of decree—Computation of* 89 *days for making—Time when Court is closed if to be excluded—Section* 14—*Delay in making application due to accident of Court being closed on last day of period allowed and not due to laches—Right to certificate under section* 14.

In computing the period of 89 days from the date of decree, within which an application for review of judgment may be presented on payment of half the fee payable on the plaint or memorandum of appeal, the time during which the Court is closed for vacation cannot be excluded. Where the 89th day happened to be a Sunday it cannot be contended that Article 5 applied where the application for review was filed on the next day.

As however the applicant cannot be said to be guilty of laches in not being able to comply with Article 5 of the Court-Fees Act a certificate can be issued to the petitioner under section 14 of the Court-Fees Act, enabling him to obtain refund of half of the full court-fee paid by him under Article 4 of the Court-Fees Act.

T. Lakshmiah and *K. Srinivasamurthi* for Appellant.

Respondent not represented.

K.S. *Certificate directed to be issued.*

Rajamannar, C.J. and Viswanatha Sastri, J. Seshadri *v.* Ramaswami Pillai.
11th August, 1950. C. M. P. No. 3442 of 1950.

Madras Buildings (*Lease and Rent Control*) *Act* (*XV of* 1946), *section* 7 (1)—*Scope—Letter by lessee to his lessor drawing attention to decree for eviction obtained by owner of the site against the lessor and calling upon him to make good defect in title—If attracts section* 7 (1), *Proviso* (2) *of the Act.*

R who had constructed a cinema theatre on certain sites belonging to a Devasthanam entered into an agreement with *S*, under which *R* agreed to lease out the premises to *S* for a period of 15 years in the first instance and to extend the lease for a further period of 10 years at the option of *S*. It was specifically provided

in the agreement that a formal lease deed would be executed between the parties subsequently. Some time after execution of this agreement *R* passed a letter to *S* in which he admitted that the land on which the theatre stood belonged to a Devasthanam and held himself responsible for getting the necessary permission from the Devasthanam to be in possession of the site for the period of 15 years covered by the agreement and agreed to indemnify *S* in case he failed to obtain such permission and *S* was thereby prevented from using the building for the purpose for which it was leased. *S* subsequently came to know that the Devasthanam had obtained a decree for eviction against *R*. *S* therefore wrote to *R* calling upon him to make good the defects in the title and to satisfy him that *R* had a clear and complete title for the full period of 15 years and intimated that on satisfaction being given regarding title the lease deed will have to be executed. *R* did not reply to this letter but applied for eviction under Madras Act XV of 1946.

Held: The denial of title to grant an effective lease in such circumstances cannot be said to be not *bona fide*. The case fell within the second proviso to section 7 (1) of Act XV of 1946.

The petitioner in person.

K. S. Sankara Aiyar and *V. Sundaresan* for 1st Respondent.

K.S. ——— *Order quashed.*

Rajamannar, C.J. and Viswanatha Sastri, J. Mohamad Ibrahim *v.* Askira Mohideen.
11*th August*, 1950. C. M. P. No. 9587 of 1949.

Certiorari—*Writ of—Finding by appellate tribunal under Madras Buildings (Lease and Rent Control) Act that two cheques issued by tenant for rent were issued on the respective dates and that there was no default—Grave suspicion as to the case of tenant—Cannot be said to be any error of law apparent on the face of the order of the appellate tribunal to justify interference.*

Though the Rent Controller found that two cheques for rent of two months were drawn on the same day in March and that therefore there was default, the appellate tribunal held that there was no default on the part of the tenant because he found that the two cheques were really sent on different days in different months in payment of the rent for the respective months. In a petition to quash the order of the appellate tribunal,

Held: Though there may be grave suspicion as to the case of the tenant and though the High Court might have been inclined to adopt the finding of the Rent Controller, on an application for the writ of *certiorari* it cannot be said that there is any error of law apparent on the face of the order of the appellate tribunal to warrant interference by issue of writ of *certiorari*.

S. K. Gajendram Naidu and *I. A. Salam* for Petitioner.

M. A. Ghatala for 1st Respondent.

K.S. ——— *Application dismissed.*

Panchapakesa Ayyar and Basheer Ahmed Sayeed, JJ. Paddayya, *In re.*
11*th August*, 1950. Cr. M. P. No. 1702 of 1950.

Constitution of India (1950), *Article* 134 (1) (*c*)—*Certificate of fitness for appeal to Supreme Court in a criminal case—Considerations for grant of.*

As no conditions under Article 134 (1) (*c*) of the Constitution have been framed by the Madras High Court or provisions made by the Supreme Court under Article 145, clause (1) regarding grant of certificate of fitness for appeal to the Supreme Court in criminal matters, and as no ruling of the Supreme Court interpreting Article 134 (1) (*c*) has been reported so far, a petition for grant of such certificate must be decided on merits on the facts. The same interpretation of "*is certified to be a fit one for appeal to His Majesty in Council*" will apply to the words in Article 134 (1) also. The provision is intended to meet special cases of great public or private importance. It is of the utmost importance that a certificate should show clearly upon what ground it is based. A case in which no legal principle is involved and in which there are concurrent findings of fact does not warrant the grant of a certificate that it is a fit case for appeal. The Supreme Court which has taken

the place of the Federal Court now will interfere only where it is shown that injustice of a serious and substantial character has occurred.

As none of the conditions existed in the present case certificate cannot be granted.

(1950) S.C.J. 51 (F.C.), applied.

K. S. Jayarama Aiyar and *K. Kannia* for Petitioner.

K.S. ——— *Petition dismissed.*

Rajamannar, C.J. and Viswanatha Sastri, J. Ebrahim Sahib *v.* Regional Transport Authority, Tanjore.
18th August, 1950.
C. M. P. Nos. 2963 and 3365 of 1950.

Motor Vehicles Act (IV of 1939), *section* 76—*Resolution of Regional Transport Authority declaring a bus stand unsuitable and approving of a new bus stand—Validity—Absence of notice to person affected, namely, the person conducting old bus stand—Effect.*

The Regional Transport Authority, Tanjore, by its resolution declared a site where a private bus stand was conducted by the petitioner unsuitable for use as a bus stand and that that bus stand shall cease to be an approved stopping place and approved a new bus stand constructed by the Municipality. The resolution was passed without notice to the petitioner. In an application to quash the resolution,

Held: It is firmly established that any order passed against a person, that is to say, to his detriment, by any *quasi* judicial body contravenes the canons of natural justice if it was passed without notice to him.

Section 76 of the Motor Vehicles Act has no application to the resolution and confers no power to pass the resolution.

Where starting places and terminii have been fixed in accordance with rule 27-D of the Motor Vehicles Rules, 1923 and the petitioner's bus stand has been fixed as starting place for all the buses plying for hire between Tanjore and Pudukottai and between Tanjore and Devakottai it cannot be said that the repeal of the Motor Vehicles Act, 1914, by the Act of 1939, the rules including rule 27-D framed under the provisions of the earlier Act ceased to have any force and the order fixing the bus stand as starting place also ceased to be in force. It is a well-settled rule of interpretation of statutes that where an enactment is repealed and re-enacted with or without modifications, all things lawfully done under the repealed enactment shall continue to be in force under the corresponding provisions of the later enactment unless of course there is anything in the later enactment repugnant thereto. (*See* section 18, Madras General Clauses Act.) It will be open to the Government to amend the rule and introduce a provision conferring on the appropriate authority the requisite power to alter from time to time the starting places and terminii.

It is desirable to make plain by specifically providing for the alteration of starting places and terminii for valid reasons and after notice to the parties affected thereby.

There appears to be no provisions in the Motor Vehicles Act or the Rules made thereunder, under which it is open to the Regional Transport Authority to pass an order declaring a particular bus stand, private or public, to be unsuitable for use as a bus stand. Once the Municipality chooses to grant a licence to any person to open or keep open a stand, it is doubtful if it is open to the Regional Transport Authority acting under the Madras Motor Vehicles Act to declare that stand to be unsuitable, though the existence of a private cart stand or bus stand may not by itself prevent the Municipal Council from constructing or providing public Municipal stands; but this has nothing to do with the Motor Vehicles Act.

K. V. Ramachandra Aiyar for Petitioner.

The Advocate-General (*K. Kuttikrishna Menon*) for the Government Solicitor and State Counsel on behalf of Respondent.

K.S. ——— *Order quashed.*

Balakrishna Ayyar, J. Virabhadra Rao *v.* Sokalchand Chunnilal.
4th August, 1950. C.R.P. No. 1521 of 1949, etc.

Practice—Judgment—Statement in, as to what happened in Court—Cannot be controverted by the parties—Reasons for the rule.

The rule that a statement in a judgment as to what happened in Court should not be allowed to be controverted is seen to rest on a number of salutary reasons. One is, that to depart from it and to allow such statements when they are deliberately made in judgments to be challenged would be to draw the presiding officers of Courts into the controversy between the parties, a process which must inevitably and in the long run lead to embarrassment if not demoralisation all round. Especially when the parties are rich and obstinate, vakils appearing for them would be subjected to a degree of pressure to swear to affidavits which is not to be encouraged. Confidence in the impartiality of the officers presiding in the Courts of justice is the very foundation of our judicial system and if such officers are dragged into the battle of allegations and counter-allegations that is appropriate only to the role of litigants, their detachment and the confidence which such detachment inspires will be seriously impaired.

The statements made by the judges should be accepted as final and conclusive, when there is any controversy between the parties. The remedy of the party will be to apply by way of review to the very same judge. [Case-law discussed].

D. Narasaraju and *K. B. Krishnamurthi* for Petitioner.

M. S. Ramachandra Rao and *M. Krishna Rao* for Respondent.

K.S. *C.R.P. No.* 1521 *dismissed and C.R.P. No.* 1619 *of* 1949 *allowed.*

Rajamannar, C.J. and Viswanatha Sastri, J. Ramanathaswami Gounder
10*th August,* 1950. *v.* Palaniswami Gounder.
Appeal No. 151 of 1947.

Malicious prosecution—Suit for damages for—If can be based on the institution of proceedings under section 107, *Criminal Procedure Code* (*V of* 1898)*—Gist of action.*

A suit for damages for malicious prosecution can be based on the institution of proceedings under section 107, Criminal Procedure Code, provided the necessary facts are established to sustain a claim for damages. (1947) 2 M.L.J. 27 (P.C.), relied on.

The gist of the action is the malicious and unjustifiable institution of unsuccessful proceedings in a Court or before a judicial authority which have resulted in damages to the good name and reputation of a person or his person or property.

T. K. Subramania Pillai and *M. G. Shanmugam Pillai* for Appellant.

P. S. Kailasam for Respondent.

K.S. *Appeal dismissed. Cross objections allowed in part.*

Horwill, J. Governor-General-in-Council *v.* Krishna Shenoy.
10*th August,* 1950. C.R.P. No. 247 of 1948.

Civil Procedure Code (*V of* 1908), *Section* 80*—Notice—Requirements of—Error in the matter of designation as Secretary of State—Effect—Notice received by Governor-General and acted upon—Sufficiency.*

Railways Act (*IX of* 1890), *Section* 77*—If applicable to case of non-delivery of consignment.*

Where although the name of the Secretary of State was inadvertently given at the head of the notice, yet it was treated by the Governor-General-in-Council as notice to him and action was taken on the notice in the same way as if the notice

had been addressed to the Governor-General-in-Council, it is sufficient compliance with the requirements of section 80, Civil Procedure Code, because the Governor-General-in-Council was in fact given notice. It must be held that the notice was given to the Governor-General-in-Council notwithstanding an error in the matter of designation.

(1946) 1 M.L.J. 267, distinguished.

Section 77 of the Railways Act requiring a formal claim to be made within six months of the despatch of goods relate only to compensation for loss, destruction or deterioration of goods and would not seem to apply in cases where there was for example a detention by the Railway. If the Railway wished to oppose a suit on the ground that the plaintiff had submitted his claim beyond six months of the date of delivery of the goods for carriage by the Railway, it would be incumbent on them to show that plaintiff's claim was beyond six months from the date of entrustment of the goods and also that the goods had been lost or destroyed or deteriorated. Section 77 of the Railways Act does not apply to non-delivery when it is not known what happened to the goods.

S. S. Ramachandra Aiyar for Petitioner.

T. A. Anantha Aiyar for Respondent.

K.S. ——— *Petition dismissed.*

Horwill, J. Ponnappa Chettiar *v.* Palaniappa Nadar.
11th August, 1950. C.R.P. No. 42 of 1949.

Civil Procedure Code (V of 1908), section 20—Jurisdiction—Place where payment has to be made of the net sale proceeds by an agent to his principal—Jurisdiction of Court of that place to try suit.

The plaintiff in Madras issued instructions to his agent not to sell cotton seeds of the plaintiff in the defendant's possession, because he found the prices in Erode where the agent lived were falling while in Karur (in the adjoining district) it was rising. The plaintiff wanted the agent to get the Collector's permit to transfer the seeds from Erode to Karur. The agent failed to carry out the instructions and sold the seeds locally. The plaintiff claimed the loss sustained by the failure of the agent to carry out his instructions. In a suit filed in the Court of Small Causes at Madras.

Held: The Court had jurisdiction as it was found that the payments had to be made to the plaintiff at Madras. It is now well settled that if payment has to be made at a particular place, then that place has jurisdiction to try a suit filed for the enforcement of the contract or for damages for breach of the contract. 68 M.L.J. 504 (F.B.) and (1946) 2 M.L.J. 255, relied on. I.L.R. 27 Mad. 355 which was decided under the Code of 1882 may be no safe guide as to the present law which is somewhat wider than in the Code of 1882.

G. R. Jagadisa Aiyar and *M. Ramachandran* for Petitioner.

Ramanujam and *Venkataseshayya* for Respondents.

K.S. ——— *Petition dismissed.*

Panchapakesa Aiyar, J. Satyanarayana *v.* Nagabushanam.
11th August, 1950. A.A.A.O. No. 24 of 1949.

Execution—Irregular order entering up full satisfaction—Right of decree-holder to proceed afresh with the execution petition erroneously closed—Right of decree-holder to proceed in execution against the legal representative of the surety leaving out the principal debtor and his representatives.

Where full satisfaction has been entered erroneously, it is a case in which the Court in order to prevent obvious injustice, ought to proceed afresh with the execution petition after setting aside the irregular and illegal order entering full satisfaction. A subsequent execution petition filed by the injured decree-holder is

only to be treated as a reminder to the Court to revive that old execution petition irregularly and erroneously closed by it. Though such earlier petition was filed on the last day of 12 years' limitation under section 48 of the Civil Procedure Code, there is nothing unjust or inequitable in reviving it.

Under the law, a decree-holder can proceed against any one of the joint judgment-debtors he likes and a surety against whom the decree has been passed or his legal representative can be proceeded against without first proceeding against the principal debtor, though the decree-holder may be doing what a layman may consider to be unfair. But the *use* of law can never be an *abuse* of law, and, when the law allows it, the Court cannot disallow it.

It cannot be said that the decree-holder was not entitled to leave out a portion of the old relief prayed for when asking for a revival of the old execution petition.

V. G. Krishnamoorthy for Appellant.

G. Venkatarama Sastri for Respondent.

K.S.

Appeal dismissed. Leave to appeal refused.

Panchapakesa Ayyar, J.
14th August, 1950.

H. S. Vodayar *v.* The Vijaya Bank, Limited.
C. R. P. No. 753 of 1949, etc.

Civil Procedure Code (V of 1908), *Sections* 94 (*e*) *and* 151 *and Order* 21, *rule* 58 (2)—*Power of moffussil Court to order stay of sale in execution in another Court.*

A moffussil Court can under section 94 (*e*), Civil Procedure Code or Order 21, rule 58 (2) stay a sale in execution of a decree in a suit against a third party pending the disposal of a suit filed under Order 21, rule 63, Civil Procedure Code, by a claimant to the properties brought to sale against the claim Order. 26 M.L.J. 449, relied on.

Even if Order 21, rule 58 (2) and section 94 (*e*), Civil Procedure Code, do not apply, the Court will have ample power under section 151, Civil Procedure Code, in such a case, to grant stay of execution or sale on terms calculated not to injure the interests of the decree-holders. Cale-law discussed.

B. Pocker and *A. Atchuthan Nambiar* for Petitioner.

S. Ramayya Nayak for Respondent.

K.S.

Petition allowed.

Balakrishna Ayyar, J.
16th August, 1950.

State of H.E.H. The Nizam of Hyderabad *v.* Tarachand.
C. R. P. No. 1255 of 1948.

Limitation Act (*IX of* 1908), *section* 14—*Time during which suit had been pending in District Court of Secunderabad—If can be excused when plaint returned by that Court is re-presented in the Court of the Subordinate Judge of Vijayavada—Secunderabad Court—If "foreign Court".*

Railways—Consignment—Damage to consignor due to long delay in delivery—Risk-note X—If absolves Railway.

Section 2 (5) of the Code of Civil Procedure defines a "foreign Court" as a Court situated beyond the limits of British India, which has no authority in British India *and* is not established or continued by the Governor-General in Council. In the notification of the Government of India, No. 786-I-B., dated 9th April, 1913, the District Court at Secunderabad has been recognised as a Court which has been established or continued by the Governor-General-in-Council. A Court which has been established or continued by the Governor-General-in-Council is not a "foreign Court" within the definition of that term in the Code of Civil Procedure.

60 I.A. 167 : 64 M.L.J. 562 (P.C.) holds that the District Court of Secunderabad is a foreign Court, apparently without considering either the definition of "foreign Court" or the notification of the Government of India of 9th April, 1913. Accordingly section 14 of the Limitation Act applies and the time during which a suit had been pending before the District Court of Secunderabad can be excused when the plaint is re-presented in the Court of the Subordinate Judge of Vijayavada on being returned by the Court of Secunderabad.

Obiter.—The form Risk note X. absolves the Railway only from responsibility "for any loss, destruction or deterioration of, or damage to, the said consignment from any cause whatever". It does not, in terms, cover a case where damage is caused to the consignor by reason of any inordinate delay in the handling of goods.

V. K. Ramanatha Iyer for *Messrs. King* and *Partridge* for Petitioner.

Messrs. Brijlal Chowdri and *A. P. Sundarachari* for Respondent.

K.S. *Petition dismissed.*

Satyanarayana Rao, J. Ramakrishnayya *v.* Krishnappa Nayanimgaru.
18th August, 1950. S. A. No. 488 of 1947.

Madras Impartible Estates Act (II of 1904), *section* 4—*Decree debt against previous holder—How to be enforced against successor.*

It is necessary that a plaintiff who seeks to enforce a decree obtained against the previous owner of an impartible estate on the ground that the decree is binding upon the successor, must establish, in an independent suit, that the debt was such as would bind the estate if it was incurred by the managing member of a joint Hindu family not being the father.

(1950) 2 M.L.J. 247, relied on.

M. S. Ramachandra Rao for Appellant.

V. K. Thiruvenkatachari and *G. Vasantha Pai* for Respondent.

K. S. *Appeal allowed. Leave to appeal refused.*

Govinda Menon, J. Savitri Bai Nagen Goud *v.* Gutti Thottappa.
25th August, 1950. C. R. P. No. 671 of 1950.

Madras Co-operative Societies Act (VI of 1932) *Section* 51—*Applicability—Suit for declaration that resolution of the managing body removing the plaintiff from presidentship of the society and appointing another as president was* ultra vires *and illegal—If one "touching business" of the society—Suit if barred.*

Plaintiff sued for a declaration that the resolution of the managing body removing the plaintiff from the presidentship of a co-operative society and appointing the first defendant as president is illegal, unconstitutional and *ultra vires* the powers of the directors and consequently for a permanent injunction restraining the first defendant from taking charge as president. The defence was that the suit is not maintainable in a Civil Court because the subject-matter of the suit is one of domestic concern relating to the business and management of the society and therefore the suit is barred under section 51 of the Co-operative Societies Act, as well as the bye-laws of the Society.

Held : The dispute in the present case being one relating to the dismissal of the plaintiff from the office of presidentship, it cannot be said that "it is a matter touching the business of the society" and as such falls outside the scope of the jurisdiction of a Civil Court. [Case-law discussed].

B. V. Ramanarasu for Petitioner.

A. Bhujanga Rao and *D. R. Krishna Rao* for Respondent.

K.S. *Petition dismissed.*

[Full Bench.]
Rajamannar, C.J., Satyanarayana Rao, Panchapagesa Sastry, Viswanatha Sastri, and *Somasundaram, JJ.*
3rd April, 1950
and
FINAL DISPOSAL BY *Raghava Rao, J.*
17th August, 1950.

Muruga Mudaliar *v.* Subba Reddiar.
S. A. No. 2048 of 1946.

Registration Act (*XVI of* 1908), *section* 49—*Agreement of lease in writing but unregistered—Admissibility in evidence to prove the agreement in suit for damages for its breach.*

Per Full Bench (*Panchapagesa Sastry, J.*, dissenting).—An agreement of lease in writing required to be registered but unregistered may be used as evidence of the agreement in a suit for damages for its breach. [Case-law discussed].

[In consequence of the view of the majority of the Full Bench, *Raghava Rao, J.*, before whom the appeal came on again for final disposal on 17th August, 1950, remanded the suit for disposal on the merits.]

T. L. Venkatarama Aiyar for Appellant.

K. Bhashyam, M. S. Venkatarama Ayyar and *L. A. Gopalakrishna Ayyar* for Respondent.

K.S. *Suit remanded.*

Panchapakesa Ayyar, J.
18th August, 1950.

Lakshmi Narayanamurthi *v.* Sait Purnamchand Chatraban.
A. A. A. O. Nos. 151 and 153 of 1948.

Civil Procedure Code (*V of* 1908), *section* 48—*Receiver of judgment-debtor's property—If can be brought on record in an execution petition after the expiry of twelve years since the passing of the decree.*

A receiver of the judgment-debtor can be brought on record in an execution petition even after the expiry of twelve years since the passing of the decree. A receiver is only the representative of the judgment-debtor. He does not become the *owner*; but, in order to effectively get at the properties without any danger of the right to do so being challenged, the receiver also is made a party. The fact that the receiver was operating even when the execution petition was filed and that the decree-holder could have found this out with diligence will only be a circumstance for saddling him with costs when allowing the amendment, and will not be a circumstance converting the amendment asked for into a *fundamental one* or justifying the refusal of such amendment. Of course, if any new property with the receiver, though belonging to the judgment-debtor is sought to be included, by an amendment prayed for after twelve years of the passing of the decree, that amendment will be refused, to that extent.

V. Parthasarathi for Appellant.

D. Narasaraju for Respondent.

K.S. *Appeals dismissed. Leave to appeal refused.*

Panchapagesa Sastry, J.
21st August, 1950.

Sri Simhasanada Sri Guru Kadapayya Wadiyar *v.* Bharmalingappa.
S. A. No. 2338 of 1946.

Practice—Order for deposit of fee for commissioner to value certain paraphernalia—Failure of plaintiff to deposit on the ground that he had no funds—Dismissal of suit straightaway—Propriety.

Where the Court orders a plaintiff to deposit the fee for a commissioner to value the paraphernalia used in a procession (in a suit for declaration of right of the plaintiff to go in procession with paraphernalia and retinue) and the plaintiffs could not pay on the ground of inability to raise the money, the Court should not

straightaway dismiss the suit. The Court might very well take evidence before it orally and decide the question. It cannot be said that the Court has no other alternative except to dismiss the suit.

V. S. Narasimhachari for Appellant.

K. Umamaheswaram for Respondent.

K.S. *Appeal allowed. Leave to appeal refused.*

Panchapagesa Sastry, J. Venkatachellamma *v.* Pappiah.
23rd August, 1950. S. A. No. 1501 of 1947.

Hindu Law—Dancing girls—Succession to property of—Rules—Adoption of daughter to dancing girl—Effect.

The law of succession to dancing girl's properties must ordinarily be the Hindu Law relating to Stridhanam property of a woman or principles analogous to the same. If adoption of a daughter to a dancing girl also is recognised as permitted it should be regarded as a transfer of the person from the natural family to the adoptive family and she would have the same position as if she had been born in the latter. The principle applies to adoption by dancing girls also. On the death of the adopted woman, the adoptive mother's brother's grandson is entitled to inherit in preference to her natural brother's daughter. [Case-law discussed].

J. V. Srinivasa Rao for Appellant.

Ch. Ramakrishna Rao for Respondent.

K.S. *Appeal allowed. Leave to appeal granted.*

Chandra Reddi, J. Hari Rowjee Gore Sastri *v.* The Malabar District Board.
23rd August, 1950. C. R. P. No. 1586 of 1948.

Madras Buildings (Lease and Rent Control) Act (XV of 1946), *section* 4*—Order fixing fair rent—Date from which takes effect.*

The order of the Rent Controller takes effect from the date on which the application for fixing such rent was presented. The jurisdiction of the Rent Controller or the appellate authority being only to declare the fair rent in respect of a particular building, the landlord could claim rent from a date to which he is entitled to under the Act, that is, from the date of his filing the application, and not merely from the date of the order varying the rent.

K. P. Ramakrishna Aiyar for Petitioner.

The Advocate-General (*K. Kuttikrishna Menon*) for Respondent.

K.S. *Decree modified.*

Somasundaram, J. Joseph Pais, *In re.*
29th August, 1950. Cr. R. C. No. 649 of 1949.

Criminal Procedure Code (V of 1898), *section* 257*—Scope—Accused if entitled to have his witnesses summoned at Court's expense—Discretion of Court to order the batta of the witnesses to be deposited.*

There is no right conferred upon an accused person to have his witnesses summoned at Court's expense. The Court has a discretion under section 257 (2) of the Code of Criminal Procedure to call upon the accused to deposit the batta of the witnesses whom he wants to be summoned. Where the accused did not deposit the expenses for summons as ordered, and the witnesses are not summoned it cannot be said that the conviction of the accused is vitiated by any irregularity or illegality in not summoning the witnesses.

(1948) 2 M.L.J. 37 (F.C.), distinguished.

M. Santosh for Petitioner.

A. S. Sivakaminathan (Assistant Public Prosecutor) on behalf of the State.

K.S. *Petition dismissed.*

Govinda Menon and Basheer Ahmed Sayeed, JJ. Balasundara Pavalar, *In re.*
30th August, 1950. Cr. M. P. No. 1695 of 1950.

Bail—Second application for, pending an appeal when earlier application has been dismissed—Maintainability.

Even during the pendency of an appeal, different conditions and circumstances may arise which may necessitate or justify the granting of bail even though an earlier application for bail has been dismissed. The proper way of looking at the maintainability or otherwise of a second application for bail pending an appeal is to consider it in the same way as a second application for stay of execution of a decree pending an appeal. There is no provision in the Code of Civil Procedure, which prohibits the filing of successive applications for stay or for successive interlocutory applications pending a suit. Section 11 and the general principles of *res judicata* do not apply to such applications. But Courts are very reluctant, if not loath, to grant the same relief when once the same has been rejected on an earlier occasion.

V. V. Srinivasa Ayyangar, P. S. Sarangopani Ayyangar and *V. R. Venugopalan* for Petitioner.

The Assistant Public Prosecutor (*A. S. Sivakaminathan*) on behalf of the State.

K.S. ——— *Petitioner released on bail.*

Panchapagesa Sastri, J. Mastapha Maracair, *In re.*
31st August, 1950. Cr. R. C. No. 1159 of 1949.
(Cr. R. P. No. 1092 of 1949).

Evidence Act (*I of* 1872), *sections* 3 *and* 30—*Confession of co-accused—If sufficient evidence for basing conviction on.*

In a prosecution of the crew and passengers of a boat along with *M* the owner of the boat and *K* a broker for an offence under section 30-A (4) of the Emigration Act (VII of 1922), for attempting to leave India without a permit, statements taken from the tindal or master and also the passengers showed that *M* was the owner of the boat and *K* was a broker both of whom arranged for the trip and that *M* was present, when the passengers left the shore in the boat. All the accused were jointly tried and the crew and passengers admitted the guilt while *M* and *K* pleaded not guilty. The lower Courts convicted *M* and *K* mainly on the statements made by the passengers and the tindal. On revision,

Held, though the confession of a co-accused can be taken into consideration, it is evidence of a very week type and it is not strictly evidence under section 3 of the Evidence Act. The mere fact that the ownership of the boat was admitted is not sufficient and the convictions of *M* and *K* ought to be set aside.

(1949) 2 M.L.J. 194 (197) (P.C.), relied on.

K. S. Desikan and *K. Raman* for Petitioners.

The Public Prosecutor (*V. T. Rangaswami Aiyangar*) on behalf of the State.

K.S. ——— *Convictions set aside.*

Govinda Menon and Basheer Ahmed Sayeed, JJ. Balthu Souza, *In re.*
5th September, 1950. Cr. Appeal No. 295 of 1950.

Criminal Procedure Code (*V of* 1898), *sections* 164 *and* 288—*Witness resiling in Sessions Court from statements by them under section* 164 *and the evidence in committal Court—Earlier statements and evidence marked as substantial evidence under section* 288—*Conviction on—Sustainability.*

Where the evidence of eye witnesses before the Committal Court who speak not of any confession but what exactly they saw at the time when the crime was committed is resiled from and marked as substantial evidence under section 288

of the Criminal Procedure Code, it cannot be said that such evidence cannot be acted upon. Where such evidence goes to bring home the guilt to the accused a conviction on such evidence is sustainable.

(1949) 1 M.L.J. 228, distinguished.

H. Praphakara Rao AMICUS CURIAE for Accused.

The Assistant Public Prosecutor (*A. S. Sivakaminathan*) on behalf of the State.

K.S. ——— *Appeal dismissed.*

Somasundaram, J.
5th September, 1950.

Seetharamayya, *In re.*
Crl. R. C. No. 432 of 1950.
(Case Referred No. 21 of 1950).

Criminal trial—Sentence of fine imposed by appellate Court—Amounts to enhancement—Fine, if can be confirmed by the High Court under section 439 (3) *of the Criminal Procedure Code* (*V of* 1898) *without issuing a notice to the accused to show cause why the sentence should not be enhanced.*

A sentence of fine imposed by the appellate Court amounts to an enhancement. *Ramulu* v. *Emperor*, 1936 M.W.N. (Crl.) 242 and *Thirumal Raju* v. *Emperor*, 1947 M.W.N. (Crl.) 82. But it is doubtful if the Court can confirm the fine acting under section 439 (3) of the Code of Criminal Procedure without issuing notice to the accused to show cause why the sentence should not be enhanced. Where the accused is asked to show cause why retrial should not be ordered, the fine imposed by the appellate Court which amounts to an enhancement of the sentence cannot be confirmed by the High Court without notice to show cause why the sentence should not be enhanced.

D. P. Narayana Rao for Accused.

Padmini Raghavan for the Public Prosecutor (*V. T. Rangaswami Aiyangar*) on behalf of the State.

K.S. ——— *Reference accepted with modifications.*

Somasundaram, J.
6th September, 1950.

Eravadu, *In re.*
Cr. R. C. No. 481 of 1950.
(Case Referred No. 22 of 1950).

Criminal Procedure Code (*V of* 1898), *section* 438—*Reference under—Competency when appeal could have been filed by the State.*

Where the joint Magistrate has no power to acquit but acquits, under rule 263 of the Criminal Rules of Practice, the District Magistrate, if he is of the opinion that the order of acquittal is wrong, must request the Government to prefer an appeal under section 417 of the Criminal Procedure Code and not report the case to the High Court for orders under section 438, Criminal Procedure Code. Further under section 439 (5), Criminal Procedure Code, where an appeal lies and no appeal is brought proceedings by way of revision shall not be entertained at the instance of the party who could have appealed. In such a case, a reference is not competent.

The Public Prosecutor (*V. T. Rangaswami Aiyangar*) with *Padmini Raghavan* on behalf of the State.

Accused not appearing in person or by Advocate.

K.S. *Reference not accepted.*

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Horwill, J. Krishna Pillai *v.* Ranganatha Pillai.
17th August, 1950. C.R.P. No. 628 of 1948.

Practice—Advocate reporting no instructions—Effect on vakalath—Ex parte *decree—Application to set aside—Old vakalath—If can be acted on.*

When a vakil reports no instructions it means that he withdraws his vakalath and where an *ex parte* decree has been passed, that vakalath will not be a proper vakalath in an application by the vakil to set aside the *ex parte* order.

47 M.L.J. 398 : I.L.R. 47 Mad. 819, relied on; 47 Bom. 11 and I.L.R. (1944) All. 592, distinguished.

P. S. Ramachandran for Petitioner.

N. K. Mohanarangam Pillai and *M. V. Gopalaratnam* for Respondent.

K. S. *Petition dismissed.*

Raghava Rao, J. Venkatasubbayya *v.* Bapadu.
24th August, 1950. S. A. No. 640 of 1947.

Arbitration Act (*X of* 1940), *section* 32—*Scope and effect—Defendant in a suit relying on an award as bar to the suit—Defendant not taking steps to file the award and make it a decree—Effect.*

Where the defendant who is relying upon an award as a bar to the plaintiff's suit, did not take steps to have it filed and dealt with under the appropriate provisions of the Arbitration Act, it is not competent to him to rely upon it in answer to the action.

K. Krishnamurthi and *G. Suryanarayana* for Appellant.

B. V. Ramanarasu for Respondents.

K. S. *Appeal dismissed. Leave to appeal refused.*

Panchapagesa Sastry, J. Narasimham *v.* Atchayya.
24th August, 1950. S. A. No. 1729 of 1947.

Transfer of Property Act (*IV of* 1882), *section* 111 (*g*)—*Principle of requiring notice in writing to be given of intention to determine lease—Applicability to agricultural leases.*

As a rule of justice, equity and good conscience, the principle of the new section, section 111 (*g*) of the Transfer of Property Act requiring a notice in writing to be given of an intention to determine the lease, should also be applicable to agricultural leases. (1941) 2 M.L.J. 229. (*Umma Pulavar* v. *Dawood Rowther*), followed.

If no such notice was given a suit for possession should be dismissed.

K. Bhimasankaran for Appellant.

C. V. Dikeshitulu for Respondents.

K. S. *Appeal dismissed. Leave to appeal granted.*

Balakrishna Ayyar, J. Govindaraju Mudaliar *v.* North Vellore
30th August, 1950. Thottapalayam Town Co-operative Bank.
C. R. P. No. 1869 of 1949.

Court-Fees Act (*VII of* 1870), *section* 7-iv-*A—Suit for declaration that a sale in execution by a Co-operative Society was void—Cancellation of sale certificate—If to be valued for Court-fee.*

A sale certificate in a sale in execution of an award by a Co-operative Society is not a document of title securing property which a plaintiff suing to have the sale declared void, was bound to sue to set aside.

G. R. Jagadisa Aiyar for Petitioner.

T. C. Venkatarama Aiyar for Respondent.

K. S. *Petition dismissed.*

Govinda Menon, J. Patinhare Edora Tholanchutha *v.*
1st September, 1950. Pannchikkool Kunhammedkutty.
C. R. P. No. 745 of 1949.

Malabar Tenancy Act (*XIV of* 1930), *sections* 28 *and* 32—*Scope and effect—Tenant holding over filing application for fixing the fair rent under sections* 11 *and* 12 *of the Act after a suit for recovery of arrears of rent had been filed—Order fixing fair rent if applicable to the arrears of rent.*

The tenant will be entitled to pay the "fair rent" only after the date on which it is fixed by the Court on his application under sections 11 and 12 of the Malabar Tenancy Act. That fixation again will relate back only to the date of the application and cannot reduce the arrears of rent already accrued due, by a subsequent declaration of the fair rent. The tenant cannot take advantage of the fixation of fair rent for any period anterior to the date of filing of his application for fixing the fair rent.

C. S. Swaminathan for Petitioner.

A. Achuthan Nambiar for respondent.

K. S. *Petition dismissed.*

Chandra Reddy, J.
1st September, 1950.

Jaleel Sahib *v.* Seeniappa Ramaswami Mudaliar and Company.
C. R. P. No. 1542 of 1949.

Civil Procedure Code (*V of* 1908), *Order* 1, *rule* 10—*Addition of parties —If can be made in Insolvency Proceedings—Provincial Insolvency Act* (*V of* 1920), *sections* 5 *and* 16—*Effect.*

Resort cannot be had to the provisions of Order 1, rule 10, of the Civil Procedure Code by virtue of the provisions of section 5 of the Provincial Insolvency Act by a creditor seeking to be added as a petitioner in an application by another creditor for adjudicating the debtor insolvent. Section 16 of the Provincial Insolvency Act provides for substitution of a party as petitioning creditor and Order 1, rule 10, cannot apply. 49 Mad. 935, applied. 61 M.L.J. 719 and 51 M.L.J. 60, distinguished.

Further Order 1, rule 10 of the Civil Procedure Code, cannot be invoked unless (1) either the name of any person who ought to have been joined originally was not added as a party or (2) where the presence of a party is absolutely necessary to enable the Court to come to an effective and complete adjudication of the question involved in the suit. There is no jurisdiction in a Court to add a party in any other case. 1929 Mad. 291, 1926 Mad. 836 and 1934 Nag. 228 and Mulla's Civil Procedure Code, 11th edition, page 517, referred to.

S. K. Ahmad Meeran for Petitioner.

S. Amudachari for Respondent.

K. S. *Petition allowed.*

Somasundaram, J.
20th September, 1950.

Somasundara Kurayur and others, *In re.*
Cr. M. P. No. 1985 of 1950.

Criminal Procedure Code (*V of* 1898), *section* 526, *clause* 9—*Discretion to refuse adjournment—Limits— Wrong refusal—Effect.*

Under section 526 (9) of the Criminal Procedure Code the Sessions Judge has no doubt a discretion to refuse an adjournment if he is of opinion that the person notifying his intention of making an application for transfer under that section has had a reasonable opportunity of making such an application and has failed without sufficient cause to take advantage of it. But where the grounds on which the application was filed arose during the trial and in the course of the examination of witnesses, it cannot be said that an application for transfer could have been made earlier. An order refusing adjournment in such circumstances is clearly wrong. The error is not curable by the provisions of section 537, Criminal Procedure Code, especially where the accused contests the legality of the order even before the conclusion of the trial.

M. Ranganatha Sastri for Petitioners.

The Public Prosecutor (*V. T. Rangaswami Ayyangar*) on behalf of the State.

K. S. *Petition dismissed with directions.*

Govinda Menon and Basheer Ahmed Sayeed, JJ.
29th August, 1950.

Krishna Goundan *v.* Kalyanasundara Goundar.
A. A. O. No. 90 of 1948.

Companies Act (*VII of* 1913), *section* 202—*Appeal against order of District Court in winding up proceedings*—Locus standi *of person not* eo nominee *party to file*—*Application for misfeasance against directors*—*Limitation.*

Though a person has not been a party to a petition by the Official Liquidator in the trial Court against directors and officers of the company (for recovery of various items of amounts lost by the misfeasance or nonfeasance) it is an unquestionable fact that he has been the party at whose instance the compulsory winding up order itself has been made and the Official Liquidator has come on the scene, it must be held that the petitioning creditor is a party to the winding up proceedings and so entitled to file the appeal especially where he was a shareholder of the company. As such shareholder and as a party to the winding up proceedings at an earlier stage, it cannot be denied that he is a party interested in the winding up of the company. As shareholder the petitioner is an aggrieved person in that the order of the District Judge affects his interests in the company. As a shareholder and as an aggrieved person he has a right of appeal against the order of the District Judge which affects him. The language of section 202 of the Companies Act is very wide in its scope and though the section does not set out in specific terms as to who is the party that has the right of appeal, it will be only reasonable and in the interest of the promotion of justice to hold that any person who is interested, or any person aggrieved by a final order made by the trial Court apart from any interlocutory or formal order, should be entitled to prefer an appeal under section 202 of the Companies Act. The latter part of that section does not attract to itself all the essential requirements of section 104 and Order XLIII of the Civil Procedure Code except the formalities regulating an appeal. Otherwise than in cases where the Official Liquidator is recalcitrant or obstinate in refusing to take up any order against him on appeal, the rights and interests of persons who are not *eo nominee* parties to the proceedings will be in serious jeopardy and they will be left with no remedy against any order passed affecting them either as creditors or shareholders or contributors.

An application for misfeasance against directors by a liquidator filed within three years from the date of appointment as Official Liquidator must be considered to be in time and in accordance with section 235 (1) of the Companies Act.

K. V. Ramaseshan for Appellants.

M. Krishna Bharathi for Respondents.

K. S. ——— *Appeal allowed.*

Govinda Menon and Basheer Ahmed Sayeed, JJ.
7th September, 1950.

Venkateswara Rao *v.* Chief Secretary to the Government of Madras.
Crl. M. P. No. 1294 of 1950.

Preventive Detention Act (*IV of* 1950)—*Detenu under*—*Rules applicable to class I prisoners made applicable to security prisoners*—*If makes preventive detention punitive*—*Rights of detenu to have books and periodicals*—*Limits*—*Constitution of India* (1950), *Articles* 14, 22 *and* 25—*Scope.*

The mere fact that, while describing the privileges that the security prisoners should be entitled to, a reference is made to the privileges enjoyed by class I prisoners, does not and cannot relegate the security prisoners to the position of class I prisoners. It does not make their detention punitive. Instead of elaborately copying down all the privileges that are enjoyed by class I prisoners under the Jail Manual and stating that the detenu will be entitled to those privileges, for the sake of convenience and brievity, rule 12 of the Security Prisoners Rules, 1950 (which governs the privileges given to the security prisoners in the shape of books newspapers, etc.) states that security prisoners shall be allowed the same facilities as those enjoyed by class I prisoners in addition to some of the privileges enumerated in the said rules. It will be impossible to hold that the extension of the privileges

enjoyed by class I prisoners to the security prisoners will amount to the treatment of the security prisoners as though they are prisoners under punitive detention. Under rule 12 there is discretion vested in the Jail Superintendent to refuse any books which are not received from the approved firms, if, in his opinion they are not found suitable. There is also power given to him to appoint another person to open the post parcels, etc., which is after all a ministerial act. The delegation of this discretion to the Superintendent is not *ultra vires* of section 4 of Act IV of 1950. The rules framed under the Act are *intra vires*.

It is but legitimate that in the interest of jail discipline and the maintenance of order and peace in the places where the detenus are detained, there should be some control in the propagation of news and such control by blacking out items of news can by no means be said to be inspired by *mala fide* motives.

When there is no question as to the validity of the detention of the petitioner and when there is also no question as to the laws and rules under which his liberties and privileges are circumscribed in the interest of the security of the State and the maintenance of public order it is impossible to hold that Article 19 (1) (*a*) or Article 14 of the Constitution have been violated by not allowing the detenu to have all the books and news without censorship. It is difficult to see how the restricted privileges conferred upon the detenu would amount to a denial of the right of freedom of speech and expression or how it constitutes a denial of equal protection of the laws of the state.

Article 22 of the Constitution provides for protection against arrest and detention in certain cases and Article 25 (1) provides for freedom of conscience, profession and practice and propagation of religion. It is not clear how these two Articles could at all be availed of by the detenu in the matter of supply of books and periodicals and news items.

Leave under Article 132 (1) of the Constitution to appeal to the Supreme Court refused.

N. S. Mani for *Messrs. Row* and *Reddi* for Petitioner.

The Assistant Public Prosecutor (*A. S. Sivakaminathan*) on behalf of the State.

K. S. *Petition dismissed.*

Govinda Menon and Basheer Ahmed Sayeed, JJ.
7th September, 1950.

Arumuga Nadar, *In re.*
Cr. R. C. No. 904 of 1950.
(Cr. R. P. No. 839 of 1950.)

Criminal Law Amendment Act (*XIV of* 1908), *section* 17 (1)—*Gist of offence under.*

Section 17 of the Criminal Law Amendment Act postulates that at the time of the offence, the accused person must be a member of an unlawful association or should have taken part in the meetings of such association or should have contributed or received or solicited any contribution for the purpose of any such association or in any way assisted the operation of such association. Where all that is mentioned in a case is that the accused was connected with the Communist party before it was declared illegal, that by itself would not be sufficient to bring the accused within the mischief contemplated in section 17 (1) of the Criminal Law Amendment Act. Where after the Communist party was declared unlawful by a notification the accused who was a member of the association has gone out of view, it cannot be said that he continued a member of that party.

In the absence of any evidence that the accused is guilty of any of the mischiefs mentioned in section 17 (1) of the Criminal Law Amendment Act, the accused cannot be convicted of an offence under that section.

N. S. Mani for *Messrs. Row* and *Reddi* for Petitioner.

The Assistant Public Prosecutor (*A. S. Sivakaminathan*) on behalf of the State.

K. S. *Accused acquitted and bail bond cancelled.*

[F.B.]

Subba Rao, Panchapakesa Ayyar and Balakrishna Ayyar, JJ.
16th August, 1950.

Subramania Chettiar *v.* Narayanaswami Goundar.
Appeal No. 503 of 1946.

Madras Agriculturists Relief Act (IV of 1938)—*Principal and surety—Scaling down of debt as against agriculturist principal debtor—Effect on liability of the surety who is not an agriculturist.*

A non-agriculturist surety will not be liable for the entire debt when the principal debt has been scaled down under the provisions of the Madras Agriculturists Relief Act, but he will be liable only to the extent of the scaled down debt due by the principal debtor. (1941) 2 M.L.J. 751, overruled.

Authorities discussed.

Subba Rao and Panchapakesa Ayyar, JJ. After receipt of the opinion of the Full Bench :

29th August, 1950.

Practice—Appeal based on a decision which is overruled—Liability of appellant for costs.

Where an appeal filed on the strength of a ruling which is overruled by the Full Bench, is argued fully before and during the reference to the Full Bench the appellant cannot claim that it is a fit case for dismissing the appeal without costs. (The appeal however was dismissed with half the costs of the respondent).

37 M.L.J. 271 : I.L.R. 43 Mad. 61, distinguished.

K. V. Ramachandra Aiyar and *S. Tyagaraja Aiyar* for Appellants.

M. S. Venkatarama Aiyar and *V. S. Rangaswami Ayyangar* for Respondent.

K.S. *Appeal dismissed.*

[F.B.]

Subba Rao, Panchapakesa Ayyar and Balakrishna Ayyar, JJ.
16th August, 1950.

Desikachariar *v.* Ramachandra Reddiar.
C. R. P. No. 42 of 1947.

Madras Agriculturists Relief Act (IV of 1938), *section* 20—*Order under—If appealable.*

An appeal lies against an order under section 20 of the Madras Agriculturists' Relief Act. (Authorities discussed.)

Subba Rao and Panchapakesa Ayyar, JJ. After expression of opinion by the Full Bench :

8th September, 1950.

Madras Agriculturists Relief Act (IV of 1938), *section* 20—*Order under——Revision—Maintainability.*

As an appeal lies against the order a revision petition is not maintainable.

V. S. Rangaswami Aiyangar for Petitioner.

G. R. Jagadisa Aiyar for Respondent.

K.S. *Petition dismissed.*

Chandra Reddi, J.
24th August, 1950.

Abdul Lazeez *v.* Kondoth Pakker.
C.R.P. No. 283 of 1949.

Civil Procedure Code (V of 1908), *section* 92—*Exercise of management by* de facto *though not* de jure *muthawalli—Application for appointment of muthawalli—If can be by application or must be by suit under section* 92.

Where there is a vacancy in the office of muthawalli, and there is no question of removing an existing trustee, the vacancy may be filled up by an application to the Court. It is not necessary to bring a suit under section 92 of the Civil Procedure Code, but before making the appointment the Court should issue notice to all persons interested.

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But the District Court has no jurisdiction to appoint a muthawalli to a wakf in an application. When there is already one in *de facto* management thereof even though without any colour of title such a relief can be asked only in a suit under section 92, Civil Procedure Code.

I.L.R. 26 Pat. 531 and I.L.R. 13 Luck 523, relied on.

G. Ramakrishna Aiyar and *P. Narayanaswami* for Petitioner.

N. Sundara Ayyar and *I. Govinda Menoki* for Respondent.

K. S. *Petition dismissed.*

Subba Rao and Panchapakesa Ayyar, JJ.
7th September, 1950.

Duraiswami Naidu *v.* Muhammad Abbas Sahib.
Appeal No. 203 of 1947.

Sale of house—Vendor's right to interest on price—Limits—Transfer of Property Act (IV of 1882), section 55 (4) (b)*—Scope.*

A vendor of a house will be entitled to interest only from the date on which possession has been delivered. The words "from the date on which possession has been delivered" after the words "interest on such amount or part" in section 55 (4) (*b*) of the Transfer of Property Act have been added by the Amending Act XX of 1929. Interest on purchase price cannot be claimed so long as the vendor remains in possession of the property sold. The Amending Act accepted and embodied the rule laid down in I.L.R. 35 Mad. 625.

N. Gopala Menon for Appellant.

V. C. Veeraraghavan for Respondent.

K.S. *Appeal dismissed.*

Raghava Rao, J.
7th September, 1950.

Navakoti Daniel *v.* Ingilala Mariamma.
S. A. No. 1308 of 1946.

Seduction—Suit for damages for—If maintainable on behalf of minor girl seduced—Maintainability of action by her as one for breach of contract to marry.

An action brought by the mother of a minor girl on behalf of that girl for damages on the ground of her seduction by the defendant cannot be maintained because the person seduced cannot found on seduction as a seduction implies consent.

(English and Indian authorities discussed.)

Although a minor's contract may be void in Indian law, a contract entered into on behalf of the minor by the guardian for the minor's benefit would be binding and enforceable. Anyhow, there is no doubt that the case of an agreement for marriage made for a daughter under age by her guardian, such being the custom of the parties' community has been treated in India as an exception to the general rule that an infant's contract under Indian law is altogether void. Accordingly the suit on behalf of the minor girl can be decreed as on the basis of damages for breach of contract to marry, although the suit may not be maintainable on the basis of seduction.

K. Krishnamurthi for Appellant.

Y. G. Krishnamurthi (amicus curiæ) for respondent.

K. S. *Appeal dismissed. Leave to appeal refused.*

Panchapakesa Ayyar, J.
8th September, 1950.

Poongavanam Pillai *v.* Subramanya Pillai.
C. R. P. No. 1058 of 1949.

Sale of land—Vendee if entitled to rents and profits accruing due before the transfer—Transfer of Property Act (IV of 1882), section 36—Applicability to agricultural crops or rents.

Rents and profits accruing due *before* the transfer are not legal incidents of the property transferred. Such arrears of rent are a debt or actionable claim, and, if they are to be transferred, must be assigned separately.

If a different intention is expressed, at the time of the transfer, that different intention will be given effect to and section 36 of the Transfer of Property Act will have no application.

Where no different intention is expressed, if the Act of the transferor or transferee necessarily implies a different intention that intention, so necessarily implied will be carried out and section 36, Transfer of Property Act, will have no application.

If the two positions above indicated do not exist then, the transferor will be entitled to the rents and profits thereof accruing before the transfer and the transferee to the rents and profits thereof accruing *after* the transfer, and the passing of ownership to him. Such rents and profits should be apportioned under section 36 of the Transfer of Property Act which applies to agricultural rents. Section 36 will apply to apportionment of agricultural rents also in terms. In any event the rule prescribed under section 36 will apply as a rule of justice, equity and good conscience even to agricultural rents.

K. V. Srinivasa Aiyar for Petitioner.

M. R. M. Abdul Karim and *K. Velayudhan Nair* for Respondent.

K. S. — *Petition dismissed.*

Somasundaram, J. — Tirupatiah, *In re.*
13*th September*, 1950. — Cr. A. No. 137 of 1950.

Penal Code (*XLV of* 1860), *sections* 302 *and* 304—*Murder—Accused not pleading self-defence—Evidence showing that accused's act was in self-defence—Court can infer that accused acted in self-defence.*

Though an accused does not plead self-defence, still on the evidence and other circumstances of the case, if it can fairly be inferred that he acted in self-defence, the fact that he did not plead it does not prevent the Court from inferring that the accused acted in self-defence.

Where the accused at the time of attacking the deceased actually snatched away the weapon from the hands of the deceased it cannot be said that the accused in continuing his attack exceeded his right of private defence. The accused cannot be expected to modulate his defence at every step or be able to gauge the precise force or number of blows which would have been just sufficient to save his life.

A.I.R. 1935 Rang. 391 and A.I.R. 1933 Pat. 665, applied.

It is not necessary that the accused must prove the existence of the circumstances on which the right of private defence is founded beyond reasonable doubt. A.I.R. 1948 Pat. 294, relied on. If from the evidence it appears probable that the defence version is true, the accused is entitled to a decision in his favour even though he has not proved the truth of his version beyond reasonable doubt.

A.I.R. 1941 All. 402 ; (1935) A.C. 462 and A.I.R. 1937 Rang. 83, referred to.

C. Krishna Reddi and *P. Rami Reddi* for Accused.

The Public Prosecutor (*V. T. Rangaswami Ayyangar*) on behalf of the State.

K. S. — *Appeal allowed and conviction set aside.*

Rajamannar, C.J. and Balakrishna Ayyar, J. — Palani Gounder *v.* Rama Goundan.
14*th September*, 1950. — C. M. P. No. 3990 of 1949.

Civil Procedure Code (*V of* 1908), *sections* 109 *and* 110 *and Constitution of India, Article* 133—*Scope—Decree of High Court passed before coming into force of the Constitution—Value of subject-matter less than Rs.* 20,000—*Appeal to Supreme Court—If lies.*

Under the provisions of the Constitution an appeal will lie to the Supreme Court against the decree of the High Court passed prior to the commencement of the Constitution if an appeal lay to the Federal Court under sections 109 and 110 of the Code of Civil Procedure before the coming into force of the Constitution. Decision of *Subba Rao and Panchapakesa Ayyar, JJ.*, in *Ramaswami Chettiar* v. *Ramaswami Chettiar* in C. M. P. No. 4729 of 1949, followed.

Accordingly though the value of the subject-matter of the appeal is less than Rs. 20,000 (required under Article 133 of the Constitution) leave to appeal to the Supreme Court must be granted under Article 135 of the Constitution and sections 109 and 110 of the Civil Procedure Code.

K. V. Ramachandra Aiyar for Petitioner.

N. Sivaramakrishna Ayyar and *M. R. Narayanaswami* for Respondents.

K. S. ——— *Leave to appeal granted.*

Subba Rao, J.
14th September, 1950.

Narayanan Nambudripad *v.* Rajagopala Naidu.
C. R. P. No. 1327 of 1948.

Madras Tenants and Ryots Protection Act (*XXIV of* 1949), *section* 4 (1) (*b*)—*Scope—Sale for recovery of rent payable in respect of a different holding—If can be stayed.*

In the case of an appeal in which a sale of the holding of the tenant or the right for recovery of rent is claimed, the respondent would be entitled to the stay if within two months from the commencement of that appeal, the amount claimed in the suit or the rent for two years immediately preceding such commencement, whichever is less is deposited in Court. There cannot be any distinction on principle between the sale of the holding for rent payable in respect of the holding and for the recovery of rent payable in respect of a different holding. A sale of a holding for rent due in respect of a different holding will come within the purview of clause (*b*) of section 4 (1) of Madras Act XXIV of 1949.

D. A. Krishna Variar for Petitioner.

C. S. Swaminathan for Respondent.

K. S. ——— *Petition dismissed.*

Somasundaram, J.
19th September, 1950.

Ponnuswamy *v.* Mahipathi.
Crl. R. C. No. 90 of 1949.
(Crl. R. P. No. 87 of 1949).

Penal Code (*XLV of* 1860), *section* 441—*Accused convicted for unlawfully entering—If can be convicted for continuing to remain there after entry.*

Where a person has been convicted for unlawfully entering into or upon property in the possession of another he cannot be convicted for continuing to remain after that unlawfully. The offence is complete as soon as there was unlawful entry and it falls within section 441, Penal Code. The accused cannot be proceeded again for remaining there. The plea of *autrefois convict* wil be open to the accused in such a case.

M. Srinivasagopalan and *C. Ramanna* for Petitioner.

The State Prosecutor (*S. Govind Swaminathan*) on behalf of the State.

Respondent not represented.

K. S. ——— *Petitioner acquitted.*

Rajamannar, C.J. and
Viswanatha Sastri, J.
27th September, 1950.

Venkateswara Rao *v.* Masulipatam Municipal Council.
C. M. P. Nos. 7716 and 7717 of 1950.

Madras District Municipalities Act (*V of* 1920), *section* 23—*Power of Council to delegate powers and duties to Committees—Decision of Committees—If subject to final orders by Council—Schedule III, rule* 12—*Scope and effect.*

Under section 23 of the Madras District Municipalities Act, two classes of Committees are contemplated—(1) Committees to which the Council delegates some of its powers and duties and functions and (2) Committees which are constituted only to enquire into and report or advise on any particular matter referred to them. So far as the proceedings of the latter class of Committees are concerned, undoubtedly the Council can have the final word. The proceedings of such Committees are only advisory. But the decisions and actions of the Committees to which the

Council had delegated its powers, duties and functions in any behalf will be binding on the Council. Rule 12 of Schedule III only provides for the recording of the proceeding of the Committee in writing and for the submission of the proceedings recorded to the Council for information. The proceedings are not subject to further consideration by the Council.

S. Suryaprakasam and *A. S. Prakasam* for Petitioners.

K.S. *Applications dismissed.*

Rajamannar, C.J. and Viswanatha Sastri, J.
28th September, 1950.

Periasami Pillai *v.* Executive Officer, Panchayat Board, Tiruvayaru.
C. M. P. No. 9063 of 1950.

Madras Local Boards Act (XIV of 1920), *section* 56 (1) (h)—*Attending urgent meeting by member who has not attended general meetings for three consecutive months—If prevents the member ceasing to hold office—Member attending meeting after ceasing to be member—If restored to office under section* 56 (4)—*Proper procedure for restoration.*

A member who has been absent from ordinary meetings of the Panchayat Board for three consecutive months cannot say that by reason of his being present during those months at some of its urgent meetings he cannot be said to have absented himself for three consecutive months. The urgent meetings must be left completely out of account in reckoning the absence of the member under section 56 (1) (*h*) of the Local Boards Act. A person attending a meeting after ceasing to hold office cannot be deemed to have been restored under section 56 (4) of the Act. A person who has ceased to be a member of the Board can be restored only by a resolution of the Board at a meeting held after an application by such person for restoration.

B. V. Ramanarasu for Petitioner.

K. S. *Application dismissed.*

Subba Rao and Panchapakesa Ayyar, JJ.
28th September, 1950.

Venkatapayya *v.* Punnayya.
S. A. No. 777 of 1948.

Madras Agriculturists Relief Act (IV of 1938), *section* 3 (iii-a) (*as amended by Act XXIII of* 1948)—*Mortgage for Rs.* 1,000—*Provision for repayment by eight annual instalments of* 35 *bags of paddy each—Excess of value of produce over amount advanced—If "interest"—Scaling down.*

The defendants executed a mortgage dated 29th November, 1940, in favour of the plaintiff. The principal sum was Rs. 1,000. It was stipulated therein that the loan should be discharged by delivery of eight instalments of 35 bags of paddy each, and in default each of the instalments should carry interest at 12 per cent. per annum. The defendants paid four instalments. As default was made in regard to the 5th and 6th instalments the mortgagee filed a suit for recovery of the produce payable to him valuing the same at Rs. 11 per bag. Though under the terms of the document he was entitled to claim interest at 12 per cent. per annum he was content with claiming 6¼ per cent. per annum. The defendants contended that the debt should be scaled down. On the question whether the debt was not liable to be scaled down as no interest was payable under the document (pending the second appeal, the Agriculturists Relief Act having been amended by Act XXIII of 1948).

Held, as the produce delivered to the plaintiff was of higher value than the principal amount to the extent of the excess, it is a "thing paid" in excess of what has been borrowed. The excess paid would be "interest" within the meaning of section 3 (*iii-a*) of Madras Act (IV of 1938), and can be scaled down. It is immaterial whether interest is expressly mentioned or not in the document or contract. The only condition is that the debtor should have paid some amount or thing which was in excess of the money advanced. Section 3 (*iii-a*) cannot be construed in the light of the Explanation to section 8 of the Act.

The word " interest " was introduced by the Amending Act to get over the view expressed by Patanjali Sastri, J., in S. A. No. 1141 of 1940.

P. Somasundaram and *P. Suryanarayana* for Appellants.

Y. G. Krishnamurthi for Respondents.

K.S. *Appeal allowed.*

[F.B.].
Govinda Menon, Balakrishna Ayyar and Basheer Ahmed Sayeed, JJ.
29th September, 1950.

Narayana Ayyar *v.* Veerappa Pillai.
Cr. R. C. No. 282 of 1950.
(Cr. R. P. No. 266 of 1950).

Penal Code (*XLV of* 1860), *sections* 193 *and* 500—*Offence under both sections—Complaint by person defamed under section* 500—*Maintainability—Complaint by Court under section* 195, *Criminal Procedure Code—If essential.*

Per Govinda Menon, J.—Even when the Court before which the alleged defamer had given evidence finds that the deposition is false, it is open to the person defamed to institute proceedings under section 499, Penal Code, without the Court filing a complaint in accordance with the provisions of section 195, Criminal Procedure Code. All the more so is such a complaint unnecessary where a defamatory statement is made by a witness in the course of a judicial proceeding and the Court has not adjudicated upon the truth or falsity of it, or where the Court was deprived of an opportunity of so adjudicating ; in all such cases it is open to the party defamed to take proceedings under section 499, Penal Code.

(1941) 2 M.L.J. 618 : I.L.R. (1942) Mad. 158, approved.

Per Balakrishna Aiyar, J.—Where an alleged offence falls both under sections 193 and 500 of the Penal Code a complaint of the Court is not necessary to enable a Magistrate to take cognisance of a complaint under section 500 of Penal Code alone.

Per Basheer Ahmed Sayeed, J.—Any statement or averment made in the course of judicial proceedings whether false or true could be made the subject-matter of a criminal prosecution by the person aggrieved, when the said statement or averment or evidence is also capable of being brought within the scope of section 193 of the Penal Code, without a complaint being given by the Court before which the statement or averment was made or evidence given.

K. S. Jayarama Aiyar, C. K. Venkatanarasimham and *Padmini Raghavan* for Petitioner.

M. K. Nambiar and *M. Srinivasagopalan* for Complainant.

The Public Prosecutor (*V. T. Rangaswami Aiyangar*) on behalf of the State.

K. S. *Petition dismissed.*

Rajamannar, C.J. and Viswanatha Sastri, J.
3rd October, 1950.

Tej Singh *v.* Soora Subbarayulu Chetty.
C. M. P. No. 324 of 1950.

Madras Buildings Lease and Rent Control Act (*XV of* 1946), *section* 4 (2)—*Payment of taxes and money spent for repairs by the tenant—If to be regarded in fixing fair rent under the Act.*

Under section 4 (2) of the Madras Buildings Lease and Rent Control Act, in fixing the fair rent regard must be had also to the circumstances of the case including any amount paid by the tenant by way of premium or any other like sum in addition to rent after the 1st April, 1946. Whether or not the taxes payable by the tenant under a special contract and the amounts spent or to be sent for repairs fall within the phrase " any amount paid by the tenant by way of premium or any other like sum" such payments by the tenant would certainly be one of the circumstances of which the controller should have due regard in fixing the fair rent. The liability for the payment of Municipal taxes is primarily on the landlord.

If such a liability is undertaken by the tenant, the landlord is clearly getting not only the benefit of the rent but also the benefit of the payment of the taxes. Whether or not an amount paid by the tenant towards the taxes can be taken into account in ascertaining what the standard rent is according to the English Statutes, the fact would certainly be a circumstance to be taken into account in fixing the fairrent under section 4 of Madras Buildings Lease and Rent Control Act.

But the circumstance that the tenant spent a considerable amount on additions and improvements to the building cannot be taken into consideration in fixing the fair rents especially where there is an express term in the lease that such improvements had to be handed over to the landlord at the end of ten years.

M. S. Venkatarama Ayyar and *S. S. Bharadwaj* for Petitioner.

T. C. A. Anandalwan for 1st Respondent.

K.S. ——— *Order of Appellate Tribunal quashed.*

Govinda Menon and Basheer Ahmed Sayeed, JJ.
4th October, 1950.

Sivasubbu Nadar, *In re.*
R. T. No. 98 of 1950.
C. A. Nos. 567 and 695 of 1950.

Criminal trial—Judge putting questions to the witnesses both while prosecution examined them as well as at the time when the defence cross-examined them—Propriety—Evidence Act (I of 1872*), sections* 138 *and* 165*—Scope.*

The practice of Judges and Magistrates questioning the witnesses as if they were cross-examining counsel must be deprecated. It is opposed to the provisions of section 138 of the Evidence Act and not fair to the prisoners.

It is not the province of the Court to examine the witnesses unless the pleaders on either side have omitted to put some material question or questions, and the Court should, as a general rule, leave the witnesses to the pleaders to be dealt with as laid down in section 138 of the Evidence Act. The Judge's power to put questions under section 165 is certainly not intended to be used in such cases. It will be embarrassing to counsel examining a witness when the trial Judge or Magistrate puts questions during the course of either examination in chief or cross-examination which would take him away from the trend of his questions. I.L.R. 6 Cal. 279 (283), relied on.

K. S. Jayarama Ayyar and *C. K. Venkatanarasimham* for Accused.

The Public Prosecutor (*V. T. Rangaswami Aiyangar*) on behalf of the State.

K. S. ——— *Sentences modified.*

Somasundaram, J.
4th October, 1950.

Venkatakrishnan, *In re.*
Cr. R. C. No. 242 of 1950.
(Cr. R. P. No. 227 of 1950).

Motor Vehicles Act (IV of 1939*), sections* 116, 78, 112 *and* 131*—Prosecution for offence under section* 116*—Non-compliance with procedure prescribed by section* 131*—Accused if can be convicted for minor offence under sections* 78 *and* 112 *where all ingredients of offence under section* 116 *are proved.*

Where all the ingredients of the offence under section 116 of the Motor Vehicles Act are proved but because of the non-compliance with the mandatory procedure prescribed by section 131 the accused could not be convicted of that offence it is doubtful if the petitioner can be convicted of the minor offence under sections 78 and 112 of the Act. The benefit of the doubt must be given to the accused and he must be acquitted.

S. G. Rangaramanujam for Petitioner.

The State Prosecutor (*S. Govind Swaminathan*) on behalf of the State.

K. S. ——— *Conviction and sentence set aside.*

Somasundaram, J.
5th October, 1950.

Badha Sahib, *In re.*
Cr. M. P. No. 1783 of 1950.

Penal Code (*XLV of* 1860), *section* 415—*Cheating—Representation by accused that he will double currency notes* (*an offence*)—*If ceases to be representations at all.*

What is necessary under section 415 of the Penal Code is that a person must be deceived and therefore he must be induced to deliver up property. Deception of a person arises out of credulity of the person deceived and it is as a protection of the credulous persons that the offence of cheating is created. Representations made by persons who promise to do an act which is an offence (*e.g.*, to double currency notes) by which they induce any person to believe that they can make them richer do not cease to be representations in law. It cannot be said that these do not constitute representations at all.

Although the person deceived may not be able to recover the currency notes (parted with by him for an unlawful purpose) through a Court of law, it does not necessarily mean that the property was not his at the time when he parted with it. What we are concerned with in sections 415 and 420, Indian Penal Code, is parting with property at the time the complainant did and on account of the representation made by the accused.

F. S. Vaz and *P. M. V. Srinivasan* for Petitioners.

The State Prosecutor (*S. Govind Swaminathan*) on behalf of the State.

K.S. ——— *Petition dismissed.*

Rajamannar, C.J. and
Viswanatha Sastri, J.
10th October, 1950.

Thangavelu *v.* Management of the Buckingham and Carnatic Company, Ltd.
C. M. P. No. 5789 of 1950.

Industrial Disputes Act (*XIV of* 1947), *section* 33—*Order under granting permission to the employer to discharge certain workmen—If judicial or quasi-judicial order which can be quashed by issue of writ of* certiorari.

An order of the Industrial Tribunal under section 33 of the Industrial Disputes Act granting permission to the employer to discharge certain workmen is not a judicial or quasi-judicial order which can be quashed by the issue of a writ of *certiorari*. It may be that after obtaining the permission the employer may refrain from taking the action permitted. It is only when the action is actually taken, say, by discharge that the employee or employees would be aggrieved. If however the order amounts to a *decision*, than under section 7 of the Industrial Disputes (Appellate Tribunal) Act (XVLIII of 1950) an appeal will lie to the Appellate Tribunal from such a decision. A specific remedy being provided by statute, which is an adequate remedy, the prerogative writ of *certiorari* will not issue.

B. Manavala Chowdry for Petitioner.

O. T. G. Nambiar for *Messrs. King and Partridge* for 1st Respondent.

Miss Perwill Amiruddin for the State Prosecutor (*S. Govind Swaminathan*) for 2nd Respondent.

K.S. ——— *Application dismissed.*

Somasundaram, J.
10th October, 1950.

Athappa Goundan, *In re.*
Cr. R. C. No. 542 of 1949.
(Cr. R. P. No. 492 of 1949).

Indian Penal Code (*XLV of* 1860), *section* 341—*Gist of offence under—Physical obstruction—If essential ingredient of offence under section* 341.

It is doubtful whether, without physical obstruction, by mere words, a person can be said to commit an offence under section 341, Indian Penal Code. Even if it is considered an offence still section 95, Penal Code, will apply.

V. Rajagopalachari and *E. Subramanyam* for Petitioners.

The Public Prosecutor (*V. T. Rangaswami Aiyangar*) on behalf of the State.

K.S. ——— *Conviction set aside.*

[F.B.]
Subba Rao, Panchapakesa Ayyar and Balakrishna Ayyar, JJ.
16*th August*, 1950.

Veerraju *v.* Balakoteswara Rao.
A.A.O. No. 142 of 1947.

Madras Agriculturists Relief Act (IV of 1938), *sections* 8 (4) *and* 9 (2)—*Creditor, if entitled to retain any excess payments made to him after* 1-10-1937 *towards interest.*

A creditor is not entitled to retain payments made after 1st October, 1937, towards interest in excess of the interest payable under the provisions of the Madras Agriculturists Relief Act without adjusting them towards the principal. In regard to this matter there is no distinction in principle between a debt to which the provisions of section 8 of Act IV of 1938 apply and that governed by the provisions of section 9 of that Act. (1940) 2 M.L.J. 185 and (1941) 1 M.L.J. 25, overruled. (1949) 2 M.L.J. 394, distinguished.

[Following the Full Bench decision the appeal was dismissed by Subba Rao, J., on 8th September, 1950].

P. Satyanarayana Raju for Appellant.

A. Sundaram Ayyar and *Ch. Suryanarayana Rao* for the 1st Respondent.

K.S. *Appeal dismissed.*

Chandra Reddi, J.
5*th September*, 1950.

Perumal Mudaliar *v.* Ummer Koya.
C.R.P. No. 1223 of 1949.

Provincial Small Cause Courts Act (IX of 1887), *section* 17—*Non-compliance with requirements of—Application to excuse delay—Limitation Act (IX of* 1908), *section* 5—*Applicability.*

Section 5 of the Limitation Act is applicable to proceedings under section 17 of the Provincial Small Cause Courts Act. The delay in making payment required by the proviso to section 17 of the Provincial Small Cause Courts Act can be excused in an application under section 5 of the Limitation Act.

42 M.L.J. 484 : 45 Mad. 628 ; 44 M.L.J. 247 and 61 M.L.J. 710, followed. 38 M.L.J. 539 : 43 Mad. 579 (F.B.), considered.

P. S. Balakrishna Aiyar and *P. S. Ramachandran* for Petitioner.

K. P. Ramakrishna Aiyar for Respondent.

K.S. *Petition allowed and application remanded.*

Balakrishna Ayyar, J.
21*st September*, 1950.

Muthuswami Iyer *v.* Dandayuthapani.
C.R.P. No. 1156 of 1950.

Civil Procedure Code (V of 1908), *Order* 6, *rule* 17—*Suit on promissory note by widow for money borrowed for funeral expenses of her husband—Death of widow—Amendment converting the suit into one on the debt and seeking to make the estate of the husband liable for the decree that may be passed—Permissibility.*

A suit was filed against a widow on a promissory note executed by her for money borrowed for the purpose of discharging hand-loans taken for the purpose of the funeral expenses of her husband. The widow denied execution of the promissory note and after issues were framed died. The plaintiff sought to amend the plaint (1) to convert the suit which was originally on the note into one on the debt ; and (2) to make the estate of the husband liable for the decree that might be made in the suit. The adopted son resisted the application.

Held : Leave to amend must be granted.

15 Mad. 417 and A.I.R. 1935 Mad. 160, relied on.

A.I.R. 1940 Mad. 639, distinguished.

The death of the widow cannot increase or decrease the rights either of the plaintiff or of the adopted son as against the plaintiff. The adopted son would take the estate of his adoptive parents in the state in which it stood at the moment he became entitled to it. Amendment cannot be refused on the ground that it will take away a plea of limitation which the adopted son will have if a fresh suit was filed.

R. Rangachari for Petitioner.

S. Ramachandra Aiyar for Respondent.

K.S. *Petition allowed.*

N R C

Balakrishna Ayyar, J. Krishna Aiyar *v.* Narayanan.
21st September, 1950. C. R. P. No. 532 of 1949.

Civil Procedure Code (V of 1908), Order 47, rule 1 (1)—Scope—Trial judge if can write a second judgment reversing his first on fuller arguments.

It is not open to a trial Judge to write a second judgment reversing his first because on fuller argument and further consideration he thought that the view he had first taken was wrong. That is clearly not a purpose for which Order 47, rule 1 (1) of the Code of Civil Procedure Code is intended.

Sr. Ramachandra Aiyar for Petitioner.

R. Desikan for Respondent.

K. S. *Petition allowed.*

Krishnaswami Naidu, J. Narasimhan *v.* Narasimhachari.
27th September, 1950. Appl. No. 2844 of 1950 in C. S. No. 42 of 1950.

Madras Agriculturists Relief Act (IV of 1938), section 19—Mortgage decree scaled down before Madras Act (XXIII of 1948) (Amending Act) came into force—Second application for scaling down after Amending Act—If maintainable.

After an application under section 19 of the Madras Agriculturists Relief Act (1938), has been taken, heard and decided finally it is not open to the judgment-debtor to file a similar application again, for taking advantage of certain amendments in the method of scaling down which has been introduced later by the Amending Act (XXIII of 1948). Neither section 16 of the Amending Act nor Explanation 1 to section 8 of Act IV of 1938 (as amended) gives retrospective operation to matters which have been decided prior to the date of the amendment.

T. G. Aravamudu Ayyangar for Applicants.

D. Ramaswami Ayyangar and *K. Srinivasa Rao* for Respondent.

K.S. *Application dismissed.*

Basheer Ahmed Sayeed, J. Muthukrishna Naicker *v.* Venkata Thathachariar.
29th September, 1950. C. R. P. No. 1449 of 1949.

Civil Procedure Code (V of 1908), Order 33, rule 3 and section 133—Presentation of pauper application by some one other than the applicant—Exemption from personal appearance—Who can grant—Proposed pauper suit for specific performance of contract to resell—Absence of averment that plaintiff was willing and ready to tender the money to repurchase the property—Effect.

A reading of section 133 and Order 33, rule 3, Civil Procedure Code, makes it clear that neither the District Munsiff's Court nor the Sub-Court, nor the District Court are empowered to grant exemptions to a person from the obligation to present in person his application for permission to sue as a pauper. The power to exempt under section 133, Civil Procedure Code, vests only in the State Government and under the further clause added by Madras Amendment to rule 3 of Order 33, Civil Procedure Code only the High Court can exercise such powers of exemption.

The very fact that a person is proposing to sue as a pauper for specific performance of a contract for re-sale, precludes him from averring his continuous readiness and willingness to tender the money to repurchase (from the date of the contract to the time of the hearing of the suit) and even if such averment is to be made in a pauper petition, it will by itself be a ground to dispauper the applicant. In the absence of such averment and any capacity on the part of the pauper to tender the purchase price, the pauper petition cannot be admitted and registered as a suit.

K. V. Ramachandra Aiyar for Petitioner.

N. Suryanarayana for Respondent.

K. S. *Petition allowed.*

Govinda Menon and *Basheer Ahmed Sayeed, JJ.* Venkateswara Rao, *In re.*
3rd October, 1950. Cr. M. Ps. Nos. 2031 to 2037 of 1950.

Criminal Procedure Code (V of 1898), section 491—Application for writ of habeas corpus*—Disposal on merits—Petitioners not present at hearing—If ground for restoring and rehearing—Review—If lies.*

There is no provision in law which enables the Court to rehear an application for a writ of *habeas corpus* which had been disposed of on the merits by the Court

after examining the materials placed before it, even though the party or counsel was not present at the time the petition was heard. Once the application had been looked into and disposed of on the merits there is no provision either in the Criminal Procedure Code or any other law for the time being in force which empowers the High Court to rehear such an application. An application for a writ of *habeas corpus* is of a criminal nature and no review is allowed in such matters. An application for restoration of such an application is not maintainable.

Counsel not appearing on behalf of the petitioner.

K.S. — *Petitions dismissed.*

Somasundaram, J.
6th October, 1950.

Subramania Iyer and others, *In re.*
Crl. R. C. No. 722 of 1947.
(Crl. R. P. No. 616 of 1947).

Madras General Sales Tax Act (*IX of* 1939), *section* 15 (a)—"*Fails to submit a return*"—*If can be read as fails* "*without reasonable cause.*"

In section 15 (*a*) of the Madras General Sales Tax Act, the words "fails to submit a return" must be given their natural meaning and should not be read as "fails without reasonable cause."

Only if the natural meaning would lead to "strangely anomalous" results Courts could cut down or even contradict the language.

(1935) A.C. 398 at 417 distinguished.

M. Subbaraya Ayyar for Petitioners.

M. Santanam for the Public Prosecutor (*V. T. Rangaswami Aiyangar*) on behalf of the State.

K.S. — *Petition dismissed.*

Somasundaram, J.
10th October, 1950.

Rajagopala Rao, *In re.*
Crl. App. No. 709 of 1949.

Indian Penal Code (*XLV of* 1860), *section* 124-A—*Person declaring before Magistrate as manager of printing press—Prosecution for offence under section* 124-A, *Penal Code, in respect of an article in a newspaper published in that press—Accused in jail at the time of publication and having no hand in publication of article—Failure to intimate that he ceased to be the printer of the newspaper—Effect.*

The accused was the editor, printer and publisher of a Telugu daily newspaper. Under section 4 of Act XXV of 1867 the accused made the declaration before the District Magistrate as the manager of the press attached to the newspaper. He continued to be the printer and publisher till he was arrested on 31st January, 1948. He was then in jail and continued to be so. An article was published in the newspaper on 9th April, 1948, the matter in which fell within the scope of section 124-A of the Penal Code. On a question whether the accused who was in jail at the time of the publication of the article can still be convicted of the offence under section 124-A merely because he did not write to the District Magisrate that he ceased to be the printer of the paper after his arrest on 31st January, 1948.

Held :—Though the declaration may be *prima facie* evidence that the declarant was the printer and publisher of the article, it is open to the accused to prove that he was not in fact the publisher and at the time it was published he could have had no hand in it.

As in the present case there was no evidence suggesting that the accused had any such control he was not liable for the publication of the article on 9th April, 1948, when he was inside jail.

A. Ramachandran of Messrs. Row and Reddy for Accused.

The Public Prosecutor (*V. T. Rangaswami Aiyangar*) on behalf of the State.

K.S. — *Conviction and sentence set aside.*

Subba Rao and Panchapakesa Ayyar, JJ.
10th October, 1950.

Venkataswami *v.* Manikyam.
C.M.P. No. 7117 of 1950.

Constitution of India (1950), *Article* 133—*Value of subject-matter of suit and appeal Rs.* 10,000 *in regard to judgment delivered prior to the date when the Constitution came into force—Right to leave to appeal to Supreme Court—Suit for redemption—Valuation of subject-matter.*

An appeal will lie to the Supreme Court if the value of the subject-matter of the suit and that of the appeal was Rs. 10,000 in regard to judgments delivered prior to the date when the Constitution came into force.

In a suit for redemption it is not correct to state that the property in dispute is the security given for the loan. The subject-matter is the loan for which the security was given. Where the value of such loan is less than Rs. 10,000 leave to appeal to the Supreme Court cannot be granted.

The mere fact that if the loan is not repaid in the time fixed by the decree, the mortgaged property will be sold does not raise any question affecting the security.

I.L.R. (1937) All. 405 and A.I.R. 1941 Pat. 288, dissented from.

I.L.R. (1948) Pat. 237, relied on. 39 Mad. 843, referred to.

Therefore the plaintiff cannot take advantage of Article 133 (1) (*b*) of the Constitution either.

M. Seshachalapathi for Petitioners.

V. Rangachari and *Mr. K. Mangachari* for Respondents.

K.S. ——— *Petition dismissed.*

Somasundaram, J. Muniswamy Reddy, *In re.*
27th October, 1950. Crl. R. C. No. 149 of 1949.
(Crl. R. P. No. 144 of 1949).

Criminal Trial—Charge of making false allegations against a police officer—Proof—Evidence necessary.

In a case where a person is charged with having made false allegations against a police officer, it is necessary that the falsity must be proved to its hilt by examining all the witnesses mentioned by him.

A.I.R. 1929 Mad. 496, referred to.

A. Bhujanga Rao for Petitioner.

The Public Prosecutor (*V. T. Rangaswami Aiyangar*) on behalf of the State.

K.S. ——— *Conviction and sentence set aside.*

Rajamannar, C.J. and Appireddi *v.* Inspector of Local
Viswanatha Sastri, J. Boards, Madras.
31st October, 1950. C. M. P. No. 10089 of 1950.

Madras Local Boards Act (XIV of 1920), sections 43 and 233—Scope—Power to remove president of a panchayat—Delegation to the Inspector of Local Boards—Validity—Application for issue of writ of certiorari*—Scope of enquiry by the High Court.*

Section 233 of the Madras Local Boards Act expressly confers upon the Provincial Government the right to delegate any one or more of the powers mentioned in that section except certain powers expressly mentioned therein. The power under section 43 (1) is not one of the powers expressly excepted. The Court cannot add to the exceptions mentioned in section 233. The power under section 43 is not an unconditional and absolute power to remove a president or vice-president. It is a power to be exercised only by forming an opinion that certain conditions laid down in the provision have been fulfilled. When such power is delegated by the Provincial Government to an officer like the Inspector of Local Boards, it means that the Inspector of Local Boards can exercise the power, namely, the power to remove the president or vice-president on forming an opinion that he had done one or other of the things mentioned in that provision. Every power which is conferred on the Provincial Government under the Act involves in a less or greater extent the forming of an opinion as to the expediency of exercising that power. It cannot mean therefore that the Provincial Government would not be entitled to delegate any of the powers vested in them, though section 233 expressly confers that right on them. The Provincial Government can validly delegate the power to form an opinion whether the president is guilty of certain acts or omissions and also the power to remove such president, to the Inspector of Local Boards.

All that the High Court, in an application to quash the proceedings by issue of a writ of *certiorari*, can do is to examine the order to ascertain whether the provisions of section 43 (1) and (2) of the Local Boards Act has been substantially complied with.

V. Subramanyam and *Sithikanta Sastri* for Petitioner.

K.S. ——— *Application dismissed.*

[F.B.].
Subba Rao, Panchapakesa Ayyar and Balakrishna Ayyar, JJ.
16th August, 1950.

Arunachalam Chettiar *v.* Narayanaswami Goundar.
A. A. A. O. No. 8 of 1949.

Madras Agriculturists Relief Act (IV of 1938)—*Person who was insolvent on* 1*st October*, 1937, *and* 23*rd March*, 1938, *but whose adjudication was subsequently annulled—If has saleable interest in the property.*

A debtor who was an insolvent on 1st October, 1937, and 22nd March, 1938, but whose adjudication was subsequently annulled has a saleable interest in the property on the two crucial dates. (1942) 1 M.L.J. 491, *explained*. (1948) 1 M.L.J. 290 and (1949) 2 M.L.J. 833, *approved*.

[Subba Rao, J., before whom the case came on after the opinion of the Full Bench dismissed the appeal on 8th September, 1950.]

N. Sivaramakrishna Iyer for Appellant.

K. V. Ramachandra Iyer and *S. Thyagaraja Iyer* for Respondent.

K. S. — *Appeal dismissed.*

Balakrishna Ayyar, J.
25th September, 1950.

The Firestone Tyre and Rubber Co. *v.* Ramanuja Ayyangar.
C. R. Ps. Nos. 1176 and 1177 of 1948 and 484 of 1949.

Presidency Small Cause Courts Act (XV of 1882), *section* 38—*Bench dismissing application for new trial for default of appearance—Competency to entertain application to set aside the order of dismissal.*

When a Bench of the Small Cause Court in the Presidency town has dismissed an application for a new trial for default of appearance it is not competent to that Bench to entertain an application to set aside the order of dismissal for default. The Bench has no power to restore the matter under section 38 of the Presidency Small Cause Courts Act. On occasions considerable hardship might be caused to litigants if the Court is not empowered in a proper case to restore a petition dismissed for default. It is desirable to amend the rules applicable to the Small Cause Courts as was done in the case of the Appellate Side Rules of the High Court.

S. Ramayya Nayak for Petitioner.

T. R. Srinivasa Ayyangar and *T. Krishnaswami Ayyangar* for Respondent in C.R.P. Nos. 1176 and 1177 of 1948.

J. V. Srinivasa Rao for Petitioner.

B. V. Viswanatha Ayyar for Respondent in C.R.P. No. 484 of 1949.

K. S. — *Petitions dismissed.*

Rajamannar, C.J. and Viswanatha Sastri, J.
29th September, 1950.

Kondayya *v.* Official Receiver, Nellore.
L. P. A. No. 58, etc., of 1950.

Civil Procedure Code (V of 1908), *section* 24—*High Court if can transfer insolvency proceedings pending in a moffusil Court to the Original Side of the High Court.*

The High Court has no power under section 24 (1) (*b*) of the Civil Procedure Code to transfer an insolvency petition pending in a subordinate Court in the moffusil to the Original Side of the High Court.

An order refusing a transfer is not a "judgment" and not open to appeal under clause 15 of the Letters Patent (Madras).

M. S. Ramachandra Rao for Appellant.

K. Krishnamurthi for Respondent in L. P. A. Nos. 58 and 59 of 1950.

T. Lakshmiah and *K. Srinivasamurthi* for Appellant.

M. S. Ramachandra Rao and *M. Krishna Rao* and *V. Parthasarathi* for Respondents in L. P. A. Nos. 71 to 74 of 1950.

K. S. — *L. P. A. Nos.* 58 *and* 59 *of* 1950, *allowed.* *L. P. A. Nos.* 71 *to* 74 *of* 1950, *dismissed.*

Rajamannar, C.J. and Viswanatha Sastri, J.
27th October, 1950.

Gopalaswami Rao *v.* The Council, Corporation of Madras.
Case Referred No. 26 of 1949.

Madras City Municipal Act (IV of 1919), *section* 16—*Power of Commissioner to delegate his functions under Rule* 13-*A of Schedule IV to the Assistant Revenue Officer—Section* 100—*Assessment of annual value of house and lands—Principles.*

Under section 16 of the Madras City Municipal Act, the Commissioner is given a general power to delegate to the holder of any municipal office any of his ordinary powers, duties or functions. He can validly delegate his functions under Rule 13-A of Schedule IV of the Act to the Assistant Revenue Officer and the Assistant Revenue Officer has therefore jurisdiction to dispose of a revision petition against assessment of house property tax. The assessee cannot after taking the decision (after his objection to the Assistant Revenue Officer's jurisdiction has been overruled) of the Assistant Revenue Officer, Taxation Appeals Committee and the Court of Small Causes, raise an objection as to his jurisdiction again. What the assessee should have done is to have approached the High Court for the issue of a writ of prohibition preventing the Assistant Revenue Officer from proceeding to hear the application for revision and for the issue of a writ of mandamus directing the Commissioner himself to hear and dispose of it.

It cannot be assumed that the Legislature intended to include Rule 13-A of Schedule IV among the exceptions mentioned in Section 16 of the Act.

The determination of the annual value of property under the City Municipal Act depends upon the facts and circumstances peculiar to each case and they are not really questions of law. The annual value of lands and buildings shall be deemed to be the gross annual rent at which they may at the time of assessment reasonably be expected to let from month to month or from year to year less certain deductions. There is nothing improper in taking as a working basis the aggregate rents actually received from the various tenants in occupation of a building at the time of assessment.

The rent proved or admitted to be actually received would be *prima facie* evidence of the annual rental value of a property and the provisions as to fair rent in the Rent Control Act need not be taken into account in fixing the annual value under the City Municipal Act.

The applicant in person.

Messrs. John and *Row* for Respondent.

K.S. ——— *Reference answered.*

Balakrishna Ayyar, J. Subba Rao *v.* Veeraraju.
30th October, 1950. C. R. P. No. 584 of 1949.

Court-fees Act (VII of 1870), *section* 7 (*v*) *and schedule II, article* 17-*B—Alienee from coparcener in actual possession of the property—Suit for partition—Court-fee.*

An alienee from a coparcener may not be a tenant-in-common with other coparceners; he may also be not entitled to possession. Still, if as a matter of hard fact he is in actual possession of the property (a house) there is no reason why he must pay court-fee as though he were not in possession, if he sues for partition. The alienee in actual possession of the house is not bound to pay court-fee under section 7 (*v*) of the Court-fees Act. Payment under Article 17-B of Schedule II is sufficient. As to other matters included in the suit *ad valorem* court-fee has to be paid.

M. S. Ramachandra Rao and *M. Krishna Rao* for Petitioners.

B. V. Subramanyam for Respondent.

The Government Pleader (*P. Satyanarayana Raju*) on behalf of the State.

K. S. ——— *Petition allowed in part.*

Rajamannar, C.J., *and* Hajee Mahomed Hussain Sait *v.*
Viswanatha Sastri, J. The Commissioner and Council, Corporation of Madras.
31st October, 1950. Case Referred Nos. 9, 10, 11 and 29 of 1950.

Madras City Municipal Act (IV of 1919), *schedule IV—Taxation Rules—Rule* 15 (*a*) (i)*—Scope—Notice of intention to appeal—If can be validly given before the decision of the Taxation Appeals Committee is communicated to the assessee.*

A notice of intention to appeal given not after, but before the decision of the Taxation Appeals Committee is communicated to the assessee, is a good notice under rule 15 (*a*) (i) of the Taxation Rules in Schedule IV of the City Municipalities Act. There is nothing in that provision which makes it incumbent on the assessee who is aggrieved by the decision of the Taxation Appeals Committee to give notice only after the communication of the decision of the Committee. All that is material

is to find out when ten days expire from the communication of the decision by registered post. Any notice of intention to appeal given before that date would be sufficient compliance with the requirement of the rule. (1949) 1 M.L.J. 455, *distinguished.*

S. Ramachandra Ayyar and *E. R. C. Davidan* for *Messrs. King* and *Partridge* for Appellants.

Dr. John for Respondent.

K. S. ——— *References answered.*

Govinda Menon and Basheer Ahmed Sayeed, JJ.
1st November, 1950.

Sri Narayana Dossjivaru *v.* The Madras Hindu Religious Endowments Board.
A. A. O. No. 242 of 1950.

Civil Procedure Code (V of 1908), Order 39, rule 1—Plaintiff in the suit asking for injunction restraining the defendant from interfering with his possession—Appointment of receiver to take charge of the properties—Propriety.

If a plaintiff in a suit asks for an injunction restraining the defendant from interfering with his possession of the properties, it is not open to the Court to appoint a receiver and thereby dispossess the plaintiff. The words " make such other order" in Order 39, rule 1 of the Civil Procedure Code cannot be said to contemplate the appointment of a receiver and cannot be invoked to sustain an order appointing such a receiver.

K. Bashyam and *T. R. Srinivasan* for Appellant.

M. Seshachalapathi and *K. E. Rajagopalachari* for Respondent.

K.S. ——— *Order set aside and matter remanded.*

(F.B.)

Govinda Menon, Panchapagesa Sastry and Basheer Ahmed Sayeed, JJ.
2nd November, 1950.

Srinivasa Bhat *v.* The State of Madras.
Cr. M. Ps. Nos. 5647 and 8581 of 1950.

Constitution of India (1950), *Article* 226—*Power of High Court to issue writ of* certiorari *on an officer or official body beyond the limits of the Presidency town.*

Article 226 of the Constitution of India (1950) has conferred on the High Court the power to issue a writ or order on any tribunal, authority or officer, doing judicial or *quasi* judicial functions, if such authority, tribunal, or officer, was acting in excess of his jurisdiction or refusing to act in the proper exercise of such jurisdiction. The High Court has both the power and jurisdiction to issue the writs specified in Article 226.

In view of the decisions of the Supreme Court in (1950) S.C.J. 418 and (1950) S. C. J. 425, section 4 (1) (*d*) of the Press Emergency Powers Act has to be held *ultra vires* the fundamental rights conferred under Article 19 (1) of the Constitution.

Leave to appeal under Article 132 of the Constitution granted.

A. Ramachandran and *M. K. Nambiar* for *Messrs. Row and Reddy* for Petitioners.

The Advocate-General (*K. Kuttikrishna Menon*) on behalf of the Respondent.

K.S. *C.M.P. No.* 8581 of 1950 *dismissed and*
——— *C. M. P. No.* 5647 *of* 1950 *allowed.*

Rajamannar, C.J. and Krishnaswami Nayudu, J.
3rd November, 1950.

Chimbili Chinna Rangappa *v.* Komma Popi Reddi.
C. M. P. Nos. 9972 and 9973 of 1950.

Practice—Judgment—Clarification—Proper procedure—Application to bring on record legal representative in appeal—If can be made after decree has been passed.

An application to clarify a portion of a judgment is not sustainable. If the judgment has to be amended in any respect then an application for amendment must be filed. After a decree has been passed there cannot be any application to bring on record the legal representatives in the appeal. An application for amendment of the decree must be filed.

P. Somasundaram and *P. Suryanarayana Rao* for Petitioners.

C. Condiah for the first Respondent.

Second Respondent dead.

K. S. ——— *Applications dismissed.*

Govinda Menon and Basheer Ahmed Sayed, JJ.
6th November, 1950.

Thangamani *In re.*
Cr. R. C. No. 683 of 1950.
(Cr. R. P. No. 628 of 1950).

Madras Security Prisoners Rules (1947), *Rule* 15, *clauses* 6 *and* 9—*Violation of by detenu being on hunger-strike—Offence under rule* 17 (2)—*Initiation of prosecution—Sanction or approval of Government—Proper form of.*

For a prosecution of a detenu for an offence under rule 17 (2) of the Madras Security Prisoners Rules by contravention of rule 15, clauses 6 and 9 (by being on hunger-strike) specific approval of the Government must be obtained. Each case, as and when it occurs, should be reported to the Government and the Government should consider the necessity, expediency or otherwise of launching prosecutions separately and then only after such approval is accorded, can the prosecutions be launched.

A memorandum (No. 4934, dated 27th June, 1949) sent by the Government of Madras to the Inspector-General of Prisons who in turn forwarded it to the Superintendents of Jails giving general permission to all the Superintendents of Jails for launching such prosecutions against security prisoners who are guilty of such offences and intimate the effect of such prosecutions alone to the Government is opposed to rule 17 (2) and as such instructions cannot override or outweigh the efficacy of rule 17 (2). The instructions contained in the memorandum are not sufficient to sustain a prosecution.

A. Ramachandran for *Messrs. Row and Reddy* for Petitioners.

The Public Prosecutor (*V. T. Rangaswami Ayyangar*) on behalf of the State.

K.S. *Petition allowed.*

Somasundaram, J.
8th November, 1950.

Venugopala Mudaliar, *In re.*
Cr. M. P. Nos. 2410, 2411 and 2412 of 1950.

Criminal trial—Prosecution giving up an important witness and applying to Court for dispensing with evidence of such witness—Magistrate allowing the petition—Right to call such witness and examine him as Court witness even before the trial commences.

It is true that the prosecution cannot be compelled to call a witness given up by it. Though a Magistrate allows the application by the prosecution to dispense with the evidence of such a witness, the Court has a right, even a duty, to call that witness to come and give evidence as a Court witness. The Court has a discretion to examine him as a Court witness at any stage—even before the prosecution lets in its evidence. It cannot be said that the Court can call a witness only after the prosecution and the defence have closed their evidence. Where the person sought to be examined as witness (and against whom the Magistrate has issued a warrant) cannot ask the High Court to quash the proceedings. Nor can such a witness in a case in which the police have filed a charge sheet apply to the High Court successfully for a transfer of the case.

V. M. Ramaswami Mudaliar and *N. Gopala Menon* for Petitioner.

K. S. *Petitions dismissed.*

Somasundaram, J.
14th November, 1950.

Ramiah *v.* Nachiappa Chettiar.
Cr. R. C. No. 1334 of 1950.
(Cr. R. P. No. 1262 of 1950.)

Criminal Procedure Code (*V of* 1898), *section* 145 (4)—*Attachment of property—Officer taking custody—If can lease the land—Proper procedure.*

As an officer appointed under section 145 (4), Criminal Procedure Code, has not got the same power as a Receiver under section 146, his powers are limited to taking into custody of what is on the land and disposing of it under the orders of the Magistrates. There can be no leases by the officer appointed to attach the land. But it is open to him to take security from those who are willing to cultivate the land and the security can be taken from those who are willing to give the highest security. Whoever cultivates the land after giving such security does so under orders of Court and will abide by the orders of Court.

K. Veeraswami and *John Arthurs* for Petitioners.

V. Ramaswami Ayyar for Respondent.

The Public Prosecutor (*V. T. Rangaswami Ayyangar*) on behalf of the State.

K. S. *Petition dismissed.*

Subba Rao, J. Venkataswami Naicker *v.* Ramaswami Naicker.
13th September, 1950. A. A. O. No. 501 of 1947.

Madras Agriculturists Relief Act (*IV of* 1938), *section 8—Mortgagor selling some items of hypotheca to mortgagee asking him to credit the amount towards the entire debt—Appropriation.*

Where a mortgagor in a sale deed executed by him in favour of the mortgagee says " Particulars of receipt of money. The amount due to you under the mortgage debt bond executed by me in favour of you for Rs. 1,800. I have directed you hereby to adjust this sale consideration (Rs. 2,000) for it . . . . As regards the balance of the said mortgage debt, I shall discharge the same from out of the other properties mentioned in the said mortgage."

Held: It cannot be said that the Rs. 2,000 was only an open payment. There is a clear direction by the debtor to the creditor pointing out to the mode of appropriation, namely, that Rs. 2,000 should be appropriated towards the debt and that the balance only should be recovered from him. The burden is upon the mortgagor to allege and prove that no interest was oustanding on 1st October, 1931.

V. Ramaswami Aiyar for Petitioner.

K. R. Rama Aiyar and *C. S. Rajappa* for Respondent.

K. S. *Appeal allowed and case remanded.*

Balakrishna Aiyar, J. Mathradas Vallabhadas *v.* Punathil Aboobacker.
28th September, 1950. C. R. P. No. 379 of 1949.

Contract—Plaintiff engaging defendant to convey some tiles in his boat for the plaintiff—Payment of " advance " of Rs. 100 *to defendant—Plaintiff not ready with the tiles and defendant going away with his boats—Right to the amount paid as " advance "—Test.*

The plaintiff engaged the defendants to carry a certain quantity of tiles for him from Beypore to Mormagoa and paid them what was called an " advance " of Rs. 100. The plaintiff was not ready with the tiles and after waiting a reasonable time the defendants went away with their boats. In a claim by the plaintiff for the return of the Rs. 100,

Held : If the amount was only payment on account the plaintiff would be entitled to a return of the money, the defendants being relegated to a suit for damages. But regard being had to ordinary usage, it must be held that the payment in this case was really a deposit or earnest money and therefore liable to be forfeited by the plaintiff.

I.L.R. 38 Mad. 178 (F.B.), relied on. I.L.R. (1943) 2 Cal. 213, distinguished.

T. K. Raman Nambisan and *C. Vasudeva Mannadiar* for Petitioner.

K. P. Ramakrishna Aiyar for Respondent.

K. S. *Petition dismissed.*

Panchapagesa Sastry, J. Venkunaidu *v.* Appanna.
3rd October, 1950. S. A. No. 1734 of 1947.

Limitation Act (*IX of* 1908), *Article* 49—*Daughter-in-law remarrying, her husband not being heard of for over seven years—Claim by father-in-law for return of jewels presented by him at the time of his son's marriage—Limitation—Starting point.*

The plaintiff's son who lived for some time with his wife *X* thereafter disappeared and was not heard of by any body for over seven years. *X*, married another person in 1941. The plaintiff filed his suit in December, 1945, to recover certain jewels presented to *X* at the time of her marriage with his son. On a question of limitation,

Held, Article 49 of the Limitation Act is the article applicable and the starting point of limitation will be when the defendant's possession became unlawful. There being no definite proof that the plaintiff's son died on any particular day and relying on the presumption under section 107 of the Evidence Act for proof of such death, it must be held that it has not been shown that the retention of the jewels was unlawful at any time prior to three years before the suit was instituted. Accordingly the suit is not barred by limitation.

E. Venkatesam for Appellant.

D. Narasaraju for Respondent.

K. S. *Judgment of lower appellate Court set aside and appeal remanded. Leave to appeal refused.*

Balakrishna Aiyar, J. Periaswami Kaliyarayar *v.* Periaswami Padayachi.
10th October, 1950. C. R. P. No. 1280 of 1949.

Lease—Concurrent leases of same property—Vesting of reversion in the second lessee—Subsequent usufructuary mortgagee if entitled to claim the rent from the first lessee.

G the owner of the properties leased them to *P* the defendant for a term of three years commencing from 7th July, 1945. On 30th October, 1946, *G* granted a second lease of the properties in favour of *X* for ten years. On 8th November, 1946, *X* issued a notice to *P* informing him of the lease in his favour. On 7th January, 1947, when both the leases had yet sometime to run *G* granted a usufructuary mortgage of the properties in favour of *Y*, the plaintiff. On 31st January, 1947, *Y* sent a notice to *P* informing him of the usufructuary mortgage in his favour and *G* also sent a similar notice on 28th January, 1947. On 15th September, 1947, *Y* sent a second notice as the rent he claimed was not paid, and instituted the suit for the rent. *P* pleaded that *Y* failed to comply with his requirement to indemnify him against the claims of *X*, he had paid the amount to *X* and therefore *Y* was not entitled to recover from him.

Held, the second lease in favour of *X* operates as an assignment of the reversion and it entitles *X* to recover the rent from the earlier lessee and also to possession of the properties on the termination of the earlier lease and it is only subject to these rights which *G* had already created, that *Y's* usufructuary mortgage will take effect. 38 M.L.J. 684 and (1937) 2 M.L.J. 871, relied on. *Y's* suit must therefore be dismissed. [*X* who was not made a party to the suit in the Court below cannot be impleaded when the claim for the rent due is time-barred.]

T. S. Venkatarama Iyer for Petitioner.

M. S. Venkatarama Aiyar for Respondent.

K.S. *Petition dismissed.*

Chandra Reddi, J. Vaithianathan *v.* The Union of India represented by
7th November, 1950. the General Manager, South Indian Railway.
C. R. P. No. 1299 of 1950.

Civil Procedure Code (V of 1908), *Order 6, rule* 17*—Amendment—Amendment seeking to describe defendant correctly—Right to—Refusal to allow amendment—Discretion—Interference in revision.*

The petitioner filed a petition in the Court of the Subordinate Judge, Tiruchirapalli, for permission to sue in *forma pauperis*, the defendant, for damages for wrongful dismissal. As originally framed the suit described the defendant as "The South Indian Railway by the Governor in Council represented by the General Manager." Subsequently, the petitioner filed an application to change the cause title by describing the defendant as "The Dominion of India, owning the South Indian Railway, represented by its General Manager." Subsequently on the new Constitution coming into force he filed another application to change it into "The Union of India, represented by the General Manager, South Indian Railway." The application was opposed by the Union of India mainly on the ground that the plaintiff by his amendment was seeking to implead a new party in the place of the defendant (who ceased to be a legal entity on 1st April, 1944) after the lapse of the statutory period of limitation. The objection prevailed with the Subordinate Judge. On revision,

Held, a Court ought to permit a plaintiff in the normal circumstances to amend the cause title by furnishing the correct description of the defendant and there are absolutely no grounds for not according that permission in this case. In refusing to do so the trial Court failed to exercise a judicial discretion and in the interests of justice such an order must be set aside.

M. S. Venkatarama Aiyar for Petitioner,

S. S. Ramachandra Aiyar for Respondent.

K.S. *Petition allowed.*

Panchapakesa Ayyar, J. Dhanalakshmi Ammal *v.* Krishnamurthi.
29th September, 1950. A.A.A.O. No. 6 of 1949.

Civil Procedure Code (*V of* 1908), *section* 58—*Maintenance decree against husband—Execution for—Subsequent periods—Imprisonment—If permissible where defendant had been in prison for six months in respect of earlier execution.*

The origin of a maintenance decree is the date when it was passed. The end of it is the date when the maintenance holder dies. In essence, newly accruing maintenance amounts are like newly accruing instalments and a re-arrest and re-commitment to civil prison will be barred under section 58 (2) of the Civil Procedure Code, where the defendant has been in prison once in respect of an instalment. The total period in civil prison in execution of the decree in the same suit can never exceed six months.

T. S. Vaidyanatha Aiyar for Appellant.

M. R. Narayanaswami for Respondent.

K.S.

Rajamannar, C.J. and Viswanatha Sastri, J. United Commercial Bank, Ltd.,
3rd November, 1950. Mathurai *v.* Commissioner of Labour, Madras.
C.M.P. No. 3616 of 1950.

Madras Shops and Establishments Act (*XXXVI of* 1947), *section* 41 (2)—*Appeal filed by dismissed employee of a Bank to prescribed authority* (*Labour Commissioner, Madras*)—*If taken away or affected by subsequent reference of certain industrial disputes relating to Banks under Industrial Disputes Act* (*XIV of* 1947, *as amended by Act LIV of* 1949), *section* 10.

The Madras Shops and Establishments Act and the Industrial Disputes Act (Central) are not in *pari materia*. Though in one sense section 41 (2) of the Madras Act concerns a dispute between an employee and an employer, an individual dispute falling under it would not by itself be an industrial dispute falling within the scope of the Industrial Disputes Act. It may be that the dismissal of even one workman can become the subject of an industrial dispute, but then it is no longer an individual dispute between the dismissed workman and the employer only, it becomes a dispute between the workmen on the one hand and the employer on the other. Such a dispute, which may be called a collective dispute, certainly cannot be the subject-matter of an appeal under section 41 of the Madras Act. Such a dispute would have to be referred to a tribunal or other authority under section 10 of the Industrial Disputes Act, either by the Government *suo motu* or at the instance of one or both the parties.

An appeal filed on 30th June, 1949, under section 41 (2) of the Madras Act by a dismissed employee of a bank was competent and did not abate or become incompetent because of the reference by the Central Government on 21st February, 1950, under section 10 of the Industrial Disputes Act to an Industrial Tribunal of disputes between banks and their employees for adjudication.

Per *Viswanatha Sastri, J.*—It would perhaps be a different matter if the dismissed employee had taken his case before the Tribunal to which an industrial dispute had been referred under Act XIV of 1947 and got an adverse decision against him from the Tribunal before he filed an appeal under section 41 (2) of Madras Act XXXVI of 1947. In such a case it might possibly be contended that, having elected his remedy by way of submitting his dismissal to the decision of the Tribunal he could not after he got an adverse order from the Tribunal, seek relief by way of an appeal under section 41 (2) of Madras Act XXXVI of 1947.

K. Umamaheswaram and *A. Kuppuswamy* for Petitioner.

V. Ramaswami Iyer for 2nd Respondent.

K.S. *Petition dismissed*

N R C

Rajamannar, C.J. and Panchapakesa Ayyar, J. Panchayat Board, Kankipadu *v.*
13th November, 1950. Inspector of Local Boards.
C.M.P. No. 4558 of 1950.

Madras Local Boards Act (XIV of 1920), section 45-A—Delegation under section 233 by the Government of power to supersede a Panchayat Board to Inspector of Local Boards—Government taking the file and returning with a demi-official communication indicating that the Board should be superseded—Effect.

Though interference by the Government after it has delegated the power to supersede a Panchayat Board to the Inspector of Local Boards, should be deprecated, where it is clear that the Inspector himself proposed to take steps for supersession the fact that the Government set its seal of approval on the action which the Inspector had decided upon, should not render the order eventually passed as an order not passed *bona fide* in the exercise of the powers of the Inspector. The delegation itself would not divest the Government completely from all attention to the affairs of local board administration. Though the Government cannot dictate to the Inspector as to what ultimately he should do, they can initiate proceedings in the sense that they can move the Inspector to take action appropriate in the circumstances, just as any member of the public can move the Inspector after bringing to his notice irregularities or abuse of powers on the part of a local body to induce him to take action under section 45-A (1) of the Local Boards Act.

There must be something *ex facie* the order passed by the Inspector in exercise of the statutory powers to show that there are reasons for the order and that the conclusion is based on materials before him. But merely because the order of the Inspector could have been more full, it cannot be said that the order as it stands is without jurisdiction or that there is any error apparent on it face. Accordingly the order cannot be quashed by the issue of a writ of *certiorari.*

B. Lakshminarayana for Petitioner.

The Government Pleader (*P. Satyanarayana Raju*) for 1st and 2nd Respondents.

J. Sitamahalakshmi for 3rd Respondent.

K.S. ——— *Application dismissed.*

Rajamannar, C.J. and Panchapakesa Ayyar, J. Chinnikrishnan *v.* Rukmani Ammal.
15th November, 1950. C.M.P. No. 4545 of 1950.

Landlord and tenant—Monthly tenant—Money order for rent though sent not actually received by the landlord for some reason or other—Tender for next month—If should include the rent for the previous month also.

Where the rent for each month was sent within time by money order and if the money order tendering the amount of rent for one month was not actually received by the landlord for some reason or other, the tender for next month need not include the rent for the previous month.

D. Ramaswamy Ayyangar and *T. P. Kannabiran* for Petitioner.

E. R. Krishnan for 1st Respondent.

K.S. ——— *Order quashed and case remanded.*

Somasundaram, J. Raghavaiah, *In re.*
22nd November, 1950. Cr.R.C. No. 1505 of 1949. (Cr.R.P. No. 1424 of 1949).

Madras Maintenance of Public Order Act (1947), section 2-A—Gist of offence under—Order of detention of person said to have been harboured—Proof.

A person can be convicted under section 2-A of the Madras Maintenance of Public Order Act, 1947, if he knowing or having reason to believe that an order for detention has been passed in respect of the person who is said to have been harboured by the accused. The order of detention of such harboured person must be proved by filing the order itself. No secondary evidence of the order is permissible unless the conditions mentioned in section 65 of the Evidence Act are satisfied. The evidence of a newspaper in which it was stated that a person was wanted is not sufficient, especially when knowledge or reason to believe has to be proved by the prosecution. I.L.R. (1945) Mad. 237 : (1944) 1 M.L.J. 515 (P.C.), relied on.

A. Ramachandran of *Row and Reddy* for Petitioner.

The Public Prosecutor (*V. T. Rangaswami Ayyangar*) for the State.

K.S. ——— *Accused acquitted.*

Balakrishna Ayyar, J. Subbayya *v.* Ramalakshmi.
24th October, 1950. A.A.A.O. No. 66 of 1949.

Transfer of Property Act (IV of 1882), *section* 52—*Applicability—Suit by wife for maintenance claiming charge—Lis pendens.*

Whether the suit for maintenance is by a widow or by a wife, if a charge is asked for in respect of a specified property and a decree is made creating a charge, section 52 of the Transfer of Property Act would apply so as to protect the plaintiff against transfers effected *pendente lite.* (Case-law discussed).

A. Raghavayya for Appellant.

V. Subramaniam for Respondent.

K.S. *Appeal dismissed. Leave refused.*

Balakrishna Ayyar J. Venkatanarasu *v.* Venkatarangayya.
26th October, 1950. C. R. P. No. 1023 and 1024 of 1949.

Provincial Insolvency Act (V of 1920) *sections* 28 (2) *and* 28-*A—Scope—Insolvency of Hindu father—Vesting of power over sons' shares—Effect and nature of.*

When the insolvent is a Hindu father the property that would vest in the receiver would consist of two categories : (i) The share of the father in the joint family property and (ii) the right, capacity or power of the father to sell the shares of the sons to pay antecedent debts which are not illegal or immoral in character. Since the Insolvency Act makes no distinction between these two categories the extent of the control which the Official Receiver would have over the moneys realized from both the categories would be the same and would be at his disposal for payment of creditors of the insolvent. If any surplus is left, it will revert to the joint family unless there has been in the meantime a disruption of the status of the family.

B. V. Ramanarasu for Petitioners.

C. A. Vaidyalingam , *T. Venkatadri* and *K. Ramachandra Rao* for Respondents.

K. S. *Petition dismissed.*

Balakrishna Ayyar, J. State of Madras *v.* Suryanarayana Raju.
31st October, 1950. C.R.P. Nos. 907 and 908 of 1949.

Provincial Small Cause Courts Act (IX of 1887), *schedule II, article* 7—*Levy of penalty by Collector against person cultivating pasture land leased to him in contravention of prohibition in the lease—Suit to recover—If one for rent—Maintainability in Small Cause Court.*

The Government sold in auction the right to pasture cattle on certain lanka lands and the terms of the engagement prohibited the lessee from cultivating the land. The terms also authorised the Collector to impose a penalty for violation of the condition. The lessee cultivated on the land tobacco and the Collector imposed a penalty which the lessee failed to pay. In a suit to recover the amounts on the small cause side of the Sub-Court an objection was raised that the Small Cause Court had no jurisdiction by reason of article 7 of schedule II to the Provincial Small Cause Courts Act. This objection was upheld. On revision

Held : In substance the claim is for damages for breach of contract pure and simple and cognisable by the Small Cause Court. It cannot be said that the suit is for rent or for profits from the land.

The Government Pleader (*K. Kuttikrishna Menon*) for Petitioner.

P. M. Srinivasa Aiyangar for Respondent.

K.S. *Petition allowed.*

Rajamannar C.J., and *Viswanatha Sastri, J.* Andhra Paper Mills Company, Ltd. *v.* Anand Brothers.
1st November, 1950. O. S. A. No. 62 of 1950.

Madras High Court Original Side Rules, Order 7—*Suit by company in liquidation—Leave to defend by setting up counter-claim and set-off—Leave of Court under section* 171, *Companies Act, if essential.*

A party against whom a company in winding up has instituted a suit should not be prevented from establishing that on a proper taking of the account between the company and the party, *i.e.*, after adjusting mutual credits and debits, no amount

is due to the company or that the extent of the liability is more or less reduced. When the company has made a claim, any plea which has the effect of reducing the claim if successful would be a plea in defence. It may be for certain purposes, as for example, the Court-fees, a written statement containing a plea of set-off or counter-claim is treated as a cross suit; but that is not conclusive of the matter. There can be no doubt that the pleading by the defendant is defensive in character. If it is so, then section 171 of the Companies Act cannot apply. Leave of the Court under section 171 of the Companies Act is not necessary for setting up a counter-claim and set off. Accordingly leave to defend can be granted.

Per *Viswanatha Sastri, J.*—Where there have been mutual dealings between a company and a creditor proving or claiming to prove a debt in the course of the winding up of the company an account should be taken of what is due from the one party to the other in respect of such dealings and the sum due from the one party has to be set-off against any sum due from the other party and the balance of the amount and not more has to be received or paid by either side respectively. It would be unjust if the Official Liquidator could demand and recover in full moneys due by a debtor but that very debtor, if he happens to be a creditor of the Company for an equal sum, must rest content with a dividend representing a fraction of the debt due to him from the Company. The principle is the same whether this right of the creditor to a set-off is asserted before the Official Liquidator or in answer to a claim of the Official Liquidator in a suit filed by him.

A defendant pleading a set-off in defence is not commencing or proceeding with a suit or other legal proceeding against the company within the meaning of section 171 of the Companies Act and the leave of the Company Judge is not required to entitle him to resist or defend a suit filed by the Official Liquidator by pleading a set-off in his written statement.

K. Natasimha Aiyar and *Messrs. Short Bewes and Co.* for Appellant.

K. C. Jocob and *S. K. L. Ratan* for Respondents.

K. S. — *Appeal dismissed.*

Satyanarayana Rao and Raghava Rao, JJ.
1st November, 1950.

Akkulaiya Naidu *v.*
Venkataswami Naidu.
L.P.A. No. 36 of 1948.

Malicious prosecution—Initiating proceedings under section 145, *Criminal Procedure Code* (*V of* 1898)—*If* "*prosecution*" *in respect of which suit for damages for malicious prosecution will lie—Refusal of costs under section* 148 (3), *Criminal Procedure Code—Effect.*

An action for malicious prosecution is not necessarily confined to criminal proceedings in respect of an offence, but it is maintainable even in respect of civil proceedings and also in respect of other criminal proceedings such as proceedings under section 144 or section 145, Criminal Procedure Code. The gist of the action is "damage". In respect of proceedings under section 145, Criminal Procedure Code, however, as in other civil actions, provision is made in the Code in section 148 (3), for awarding costs on the basis of expenses incurred by the successful party. Where the Court refused to award costs in the proceedings, a suit for damages for malicious prosecution is not maintainable.

Decision of Rajamannar, C.J., in C.M.A. No. 378 of 1946 (16th January, 1948) affirmed.

V. T. Rangaswami Aiyangar and *K. Kalyanasundaram* for Appellant.

A. Sundaram Aiyar for Respondent.

K.S. — *Appeal dismissed.*

Panchapakesa Ayyar, J.
3rd November, 1950.

Muthuveeranna Chettiar *v.*
Muthuvenkatarama Chettiar.
A.A.A.O. No. 238 of 1946.

Limitation Act (*IX of* 1908), *article* 182 (5)—*Final order—Test—*"*Struck off*", "*lodged*", "*recorded*" *or* "*closed*"—*Effect.*

If an execution petition is "struck off", "lodged", "recorded" or "closed" while yet the reliefs prayed for, or some of them, remain undisposed of, without

being covered by final orders either granting or refusing those reliefs, then the petition will continue to be on the file of the Court despite its being "struck off", "lodged", "recorded" or "closed".

It is the clear duty of a Court to dispose of an Execution Petition really, effectively and validly in one of the ways known to law. It should not close it for statistical purposes in its anxiety for quick disposal. The law is there to give redress and relief and not for nominal and quick disposals giving no relief or redress. Where a petition is closed for statistical purposes it must be deemed to be pending and proceeded with.

K. V. Srinivasa Aiyar for Appellant.

S. Ramachandra Aiyar and *E. A. Viswanathan* for Respondent.

K.S. — *Appeal allowed.*

Chandra Reddy J.
3rd November, 1950.

Sheik Esuf Rowther *v.*
Sheik Davad Rowther.
C.R.P. No. 228 of 1949.

Arbitration Act (X of 1940), section 17—Court can pass decree on the award only after expiry of time for filing objections.

A Court can pass a decree on the award only after the expiry of time to file objections to the award. The time provided in Article 158 of the Limitation Act, for objections to the award is 30 days from the date of notice of the filing of the award, irrespective of the fact whether the parties applied for time or not. A decree passed without allowing such time to lapse is illegal and unsustainable.

R. Gopalaswami Aiyangar for Petitioner.

M. S. Venkatarama Aiyar and *M. C. Rajagopalan* for Respondent.

K.S. — *Petition allowed.*

Balakrishna Ayyar J.
7th November, 1950.

Pullayya *v.* Suramma.
A.A.A.O. No. 23 of 1949.

Provincial Insolvency Act (V of 1920), section 28—Adjudication of Hindu father—Rights that will vest in the receiver—Right of creditor of family to proceed against sons' shares.

In a joint Hindu family consisting of a father and sons there are three categories of rights :—(1) the share of the father, (2) the shares of the sons, (3) the capacity of the father to sell the shares of the sons under certain circumstances. When a father is adjudicated insolvent only rights which belong to categories (1) and (3) vest in the Official Receiver but not the right in category (2). And it is open to a creditor of the family to proceed against the rights comprised in category (2) so long as they have not been disposed of by the Official Receiver in exercise of the right in category (3). There is no bar to the shares of the sons being proceeded against. The sons cannot compel the decree-holder to implead the Official Receiver. If the Official Receiver thinks it necessary to do so it is for him to take steps to be brought on record.

V. Parthasarathi for Appellant. *K. Bhimasankaran* for Respondent.

K.S. — *Appeal dismissed.*

Rajamannar, C.J. and
Panchapakesa Ayyar, J.
16th November, 1950.

Venkatasubba Rao *v.* The State of Madras.
C. M. P. No. 2797 of 1950.

Madras District Municipalities Act (V of 1920), section 40 (1)—Removal of chairman of a Municipality by the Government—Question whether the charges against the chairman which in the opinion of the Government justified his removal were really made out—If can be gone into by the Courts—Schedule III, rule 3 (1)—Duty of chairman to convene meeting when there is a proper requisition.

In an application for the issue of a writ of *certiorari* to quash the order of the local Government removing the petitioner from his office of chairman of a Municipality, it was contended that the charges which in the opinion of the Government justified his removal were not really made out.

Held, it is not the province of the High Court or for the matter of that any Court, to record its opinion as to whether a chairman is or is not guilty of any of the charges levelled against him. Under section 40 (1) of the District Municipalities Act it is the opinion of the Government that is decisive in the matter. Unless the petitioner is able to convince the Court that the Government have not formed

an opinion on materials placed before them, or that they have formed the opinion on materials entirely irrelevant to the charge levelled against him, or that the Government acted fraudulently in exercise of the power under that section, the High Court cannot quash the order of the Provincial Government removing a chairman or vice-chairman of any Municipality.

Rule 3 (1) of Schedule III of the District Municipalities Act makes it incumbent on the chairman to convene a meeting provided three things are satisfied, namely, that (1) the requisition is by not less than a third of the members then on the Council, (2) it specifies the day (not being a public holiday) when the meeting is to be held, and (3) it specifies the purpose for which the meeting is to be held. The requisition has to be delivered during office hours to the chairman or other person mentioned in that rule at least ten clear days before the day of the meeting. Once the conditions laid down under rule 3 (1) are satisfied the chairman has no other option but to convene the meeting. The provision in rule 3 (2) as to what is to happen if the chairman failed to do his duty cannot help the chairman when proceedings are taken against him under section 40 of the Act for failure to convene the meeting.

R. Venkatasubba Rao, P. Ramachandra Rao and *P. Babulla Reddy* for Petitioner.

The Government Pleader (*P. Satyanarayana Raju*) for the State of Madras.

K.S. ——— *Application dismissed.*

Govinda Menon and Basheer Ahmed Sayeed, JJ. Subba Rao *v.* Venkatanarasimha Rao.
16th November, 1950. A. A. O. No. 388 of 1947.

Decree—Scheme decree—Directions in—If can be executed.

The operative portion of a decree was as follows :—" In the rajinama filed by the parties on 7th February, 1913, the Court was invited to frame a scheme as regards the management of the Veeravallipalem Choultry by plaintiffs and defendants 1 to 5. No detailed scheme is necessary as the rajinama says that it should be managed as a private choultry of the family. It is however necessary to give some simple directions to avoid disputes. (*a*) The properties allotted under the said rajinama and also the income of the choultry lands for the current year and the amount now ascertained and allotted to the choultry for the 6 pies share of the profits of the Kotipalli lankas, do vest in the choultry as the property of the trust. The amount now allotted will form a corpus fund which, on realisation, shall be invested in proper securities. (*b*) The choultry and its properties and income should be manged by rotation of a Telugu year, each beginning with the 1st defendant who is the eldest member and afterwards the 1st plaintiff and subsequently the 4th defendant and finally the 5th defendant. (The 4th and 5th defendants would have attained majority prior to their turn). The first defendant will also manage for the rest of the current Telugu year. (*c*) The trustee should in his turn keep proper accounts of the receipts and disbursements, file a copy of the accounts into Court once in 6 months for the inspection of the other parties and hand over the accounts with the cash on hand at the end of his turn to the succeeding trustee . . . ."

An application for execution of that decree was filed claiming that respondent 1 should be directed to hand over the account paper, etc., relating to the trust and place the petitioner in possession of the properties for managing it for three years continuously and that respondents 1 to 3 be directed to file into Court the accounts from the year Promodutha onwards till the date of petition and other incidental reliefs.

Held :—It is impossible to say that there is any decree-holder or any judgment-debtor. The decree as such cannot be executed. 59 Mad. 751 ; 45 L.W. 230 ; (1937) 2 M.L.J. 887 and (1943) 1 M.L.J. 504, relied on.

[However the execution application was permitted to be converted into a suit under the second part of section 47, Civil Procedure Code, on payment of the proper Court-fees].

P. Somasundaram and *P. Suryanarayana* for Appellants.

D. Narasaraju for first Respondent.

K. S. ——— *Appeal allowed and cross-objections dismissed.*

Govinda Menon and Basheer Ahmed Sayeed, JJ. Arumugam *v.* State of Madras.
17th November, 1950. Cr. M. P. No. 1557 of 1950.

Stare decisis—*Decisions on points of law by Federal Court—If binding on High Courts after 26th January*, 1950 (*the date of the coming into force of the Constitution*).

A combined reading of Articles 141 and 374 (2) of the Constitution can lead only to one conclusion and that is that the decisions of the Federal Court given prior to the 26th January, 1950, shall be binding on all the Courts within the territory of India. The second part of Article 374 (2) makes the decisions of the Federal Court of the same binding nature as if they had been passed by the Supreme Court. It follows that the decisions of the Federal Court on points of law will be binding on the High Courts.

[Accordingly in view of the decision in A.I.R. 1950 F.C. 129 the petition for issue of *Habeas Corpus* by a person detained under Preventive Detention Act IV of 1950, was dismissed].

Leave to appeal to Supreme Court granted.

N. S. Mani for *Messrs. Row* and *Reddy* and *Krishnamurthi* for Petitioner.

The State Prosecutor (*S. Govind Swaminathan*) on behalf of the State.

K. S. *Petition dismissed.*

Rajamannar C.J. and Panchapakesa Ayyar, J. Muthiah Chettiar *v.*
17th November, 1950. Commissioner of Income-tax, Madras.
C.M.P. No. 2282 of 1950.

Income-tax Act (*XI of* 1922), *section* 33-*A* (2)—*Revision—Limitation for—Starting point.*

The period of one year within which a revision application under section 33-A (2) of the Income-tax Act can be made has to be computed from the date when the order sought to be revised was communicated to the petitioner or the petitioner had the opportunity of coming to know of the order.

I.L.R. 34 Mad. 151 and I.L.R. 53 Mad. 491, relied on.

I.L.R. 9 Pat. 172, not followed.

If a person is given a right to resort to a remedy to get rid of an adverse order within a prescribed time, limitation should not be computed from a date earlier than that on which the party aggrieved actually knew of the order or had an opportunity of knowing the order and therefore must be presumed to have had knowledge of the order. Where the application for review has been rejected on a wrong view of section 33-A (2) a writ of *mandamus* to direct the commissioner of Income-tax to entertain and dispose of the application according to law can be issued. This relief cannot be obtained under any of the provisions of the Income-tax Act and there is no bar to the issue of the writ.

R. Kesava Aiyangar for Petitioner.

C. S. Rama Rao Saheb for Respondent.

K.S. *Petition allowed.*

Rajamannar, C.J. and Panchapakesa Ayyar, J. Komaraswami Goundan, *In re.*
22nd November, 1950.
C.M.P. No. 11260 of 1950.

Madras Buildings Lease and Rent Control Act (*XV of* 1946)—*Rent Controller or appellate tribunal—Inherent jurisdiction to set right inadvertent mistakes in petition for eviction and order on it by correcting door number of premises.*

It may be that section 151 of the Civil Procedure Code by itself does not apply to proceedings under the Madras Rent Control Act. But a *quasi*-judicial tribunal like the Rent Controller or the appellate tribunal has an inherent power to set right mistakes made by inadvertence (for instance as to the door number of the premises) in the petition for eviction and the order for eviction) so long as the amendment does not amount to a review of the adjudication already made. Where both the landlord and tenant knew to which property the proceedings related and the tenant in fact appealed on the assumption that the proceedings related to the house which he was occupying, it does not lie in the tenant's mouth to oppose an

application by the landlord for amendment of the description of the property by correcting the door number.

S. R. Subramania Aiyar for Petitioner.

K.S. —— *Application dismissed.*

Govinda Menon and Basheer Ahmed Sayeed, JJ. *23rd November*, 1950.

Official Receiver, East Tanjore *v.* Sait Jessa Singh Chathurbujdas. A.A.O. No. 322 of 1950.

Provincial Insolvency Act (V of 1920), *section* 28 (7)—*Effect—Adjudication of a person pending a suit against him—Decree without impleading Receiver—If binding on Receiver.*

By the operation of sub-section (7) of section 28 of the Provincial Insolvency Act, the insolvency of a debtor related back to the date of the filing of the application for adjudication and thereafter where the Official Receiver was not made a party to a pending suit against the debtor, the decree obtained in that suit would not be binding on the Receiver even if the Receiver would be bound by the equities. The Receiver cannot be impleaded in execution of such decree and no relief can be claimed against him.

T. S. Kuppuswami Aiyar for Appellant.

S. Ramachandra Aiyar for Respondent.

K.S. —— *Appeal allowed.*

Panchapakesa Ayyar, J. *24th November*, 1950.

Veeraswami *v.* Peda Lakshmudu. C. R. P. No. 126 of 1947.

Civil Procedure Code (V of 1908), *Order* 23, *rule* 1 (2)—*Application for withdrawing suit with leave to file a fresh suit—Court if can refuse to allow leave to file fresh suit and dismiss application—Court if bound to give reasons for refusal of leave.*

When a plaintiff files a petition to withdraw the suit with permission to file a fresh suit regarding the same subject-matter, under Order 23, rule 1 (2) of the Civil Procedure Code, the Court has the right to dismiss the petition telling the petitioner that he might withdraw the suit if he wants, but it will not give him permission to file a fresh suit regarding the same subject-matter. Such an application must be allowed or refused *in toto*. If liberty is refused the suit should not be dismissed at once but retained for trial in the usual course. The Court cannot divide the petition into two and accept the withdrawal and refuse the liberty in the same order. Though in giving liberty to file a fresh suit it should give facts and reasons, no reasons are required to be given by law for *refusing* permission to file a fresh suit, though it is desirable to give such reasons in order to let the party and the superior Courts know the reasons.

K. Kottayya and *N. Rammohan Rao* for Petitioner.

D. Munikanniah, *S. Vaidyanathan* and *K. Kanniah* for Respondents.

K.S. —— *Petition dismissed.*

Somasundaram, J. *28th November*, 1950.

Public Prosecutor *v.* Chinnappa Pujary. Cr. A. No. 754 of 1950.

Madras Prohibition Act (X of 1937), *section* 4 (2)—*Presumption of guilt under—When arises, in respect of section* 4 (1) (*j*).

The presumption of guilt under section 4 (2) of the Madras Prohibition Act will apply to a portion of section 4 (1) (*j*) but not to the whole of it. The presumption will apply to that portion which deals with buying liquor or any intoxicating drug where possession can be proved. Where possession of any liquor has not been proved and only smell of liquor having been found, the presumption cannot apply.

The Public Prosecutor (*V. T. Rangaswami Ayyangar*) for Appellant.

K. V. Ramaseshan (*Amicus curiae*) for Respondent.

K.S. —— *Appeal dismissed.*